

2018

# 'I HAVE NEVER MATTERED LESS IN THIS WORLD THAN DURING MY CHILDREN'S ADOPTION': A SOCIO-LEGAL STUDY OF BIRTH MOTHERS' EXPERIENCES OF ADOPTION LAW

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<http://hdl.handle.net/10026.1/12818>

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<http://dx.doi.org/10.24382/729>

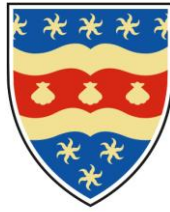
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**UNIVERSITY OF  
PLYMOUTH**

**'I HAVE NEVER MATTERED LESS IN THIS WORLD THAN DURING MY  
CHILDREN'S ADOPTION': A SOCIO-LEGAL STUDY OF BIRTH MOTHERS'  
EXPERIENCES OF ADOPTION LAW**

By

**LISAMARIE DEBLASIO**

A thesis submitted to the University of Plymouth in fulfilment for the degree of

**DOCTOR OF PHILOSOPHY**

School of Law, Criminology and Government

2018

**This is dedicated to my children:**

Francesca

Pascale

Gianni

Jude

Isaac

To Sarah Hill and Gill Owen

And to the women who participated in this research

**Acknowledgements**

Thank you to my supervisors: Jason Lowther, Kim Stevenson and Zoé James.

I am especially grateful to Kim and Jason, who are the best teachers, supervisors and colleagues that a person could wish for.

I am grateful to a number of people who influenced, inspired, advised, guided, supported and challenged me through the research process, which began long before this thesis was conceived. Thank you to my partner Joe Deblasio, Sue Abrahams, Sharon Becket, Ann Bentley, Iain Channing, Andy Clarke, John Clifton, Jenny Coles, Felicity Danks, Dan Gilling, Dr Zachary Halim, Mike Hancock, Dr Christina Hofberg and her staff at the Brockington Mother and Baby Unit, Samantha Hornby, Arta Jaili Idrissi, Siobhan Leigh-Hunt, Ann Lyon, HHJ Tony Mitchell, Laura Monk, Kirsty Montgomery, Rosemary Nugube, Sarah Parker, Simon Payne, Louise Salmon, Leslie Simmonds, Nina Skilton, Nicola Smith QC, Veronica Smith, Mohamed Afzal Somji, Daphne Statham, Carole Sutton, Jaine Wilcocks.

## **AUTHOR'S DECLARATION**

At no time during the registration for the degree of Doctor of Philosophy has the author been registered for any other University award without prior agreement of the Doctoral College Quality Sub-Committee.

Work submitted for this research degree at the University of Plymouth has not formed part of any other degree either at the University of Plymouth or at another establishment.

This study was financed with the aid of funding of tuition fees by Plymouth University Law School.

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June 2017: UK Post Graduate Doctoral Colloquium: The Ethical implications of staying in touch with research participants.

Word count of main body of thesis: 89,565

Signed: Lisamarie Deblasio

Date: 25<sup>th</sup> April 2018

**‘I have never mattered less in this world than during my children’s adoption’: A socio-legal study of birth mothers’ experiences of adoption law, by Lisamarie Deblasio**

**ABSTRACT**

This thesis explores the experiences that birth mothers face in adoption proceedings within a socio-legal context. With analysis of data from interviews with 32 birth mothers synthesised with the relevant provisions of the Adoption and Children Act 2002, it is argued that ingrained unfairness and a lack of accountability exists in the legal and administrative system where birth mothers’ rights are concerned. The requirement for fairness in adoption practice is an underlying principle of jurisprudence from the European Court of Human Rights, with emphasis on the right to family life under Article 8 of the Convention. Analysis extends to the social problems of blame and stigmatizing of birth mothers which originates from those agencies involved in the adoptions. It highlights the perspectives and voices of birth mothers, who are seldom the focus in leading discourses of professional practice in this area. This research moves some way towards equalising this disparity by acknowledging their experiences and arguing that what they have to say should be noted by professionals involved in adoption practice. The findings demonstrate the interrelationship between birth mothers and the law, with critical examination of the results in relation to previous research and jurisprudence from the family courts. This is work by a researcher with ‘insider status’ of one who shares the ‘birth mother’ identity with the participants. In order to validate the study, the research methodology is underpinned with reflexivity which demands that the researcher examines her own feelings, reactions, and motives and how this influences the analysis and the findings. This approach lessens the risk of bias and authenticates research by ensuring transparency. The original contribution to knowledge required for a doctoral thesis is the socio-legal approach to the methodology, the primary data generated from interviews with birth mothers and the subsequent findings which demonstrate the inconsistency between the law and their experiences of adoption practice.

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## INTRODUCTION

This thesis is a continuation of research carried out at undergraduate level concerning problem areas of adoption law.<sup>1</sup> Adoption law literature is based on theoretical concepts and rarely ventures into the human impact of adoption. This thesis departs from conventional legal theory because it is underpinned by the researcher's personal experiences of adoption law. A consequence of this is a theoretical basis not grounded in black letter law with 'basic standard rules that are generally known and free of moral doubt'.<sup>2</sup> Instead, the research is constructed from the foundation of subjective experience, which by nature counters legal theory with partiality and ambiguity.

My knowledge of adoption law as theory has developed from personal involvement with the legal and administrative system as a birth mother. It was found that there are advantages and disadvantages to familiarity with adoption practice prior to understanding theory. A clear advantage is the ability to utilise a lived experience to critique the disparity between academic legal theory and practice, another advantage is the ability to relate to research participants' experiences on a more indicative, although still objective level. A disadvantage is the risk of researcher bias, both conscious and unconscious. Bias derived from adverse experiences can arguably be insurmountable and thus may harm the validity and reliability of research carried out in the same area. In order to

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<sup>1</sup> Deblasio, L., 'Hiding Behind the Law? A Critique of The Law and Practice Under the Adoption and Children Act 2002', (2014) 1 *Plymouth Law and Criminal Justice Review* 148 at p. 148-172 <https://goo.gl/ujTWPC> (Accessed 25 Nov 2017).

<sup>2</sup> Legal Information Institute, Cornell Law School, <https://goo.gl/Zathsu> (Accessed 21 Jan 2018).

carry out legitimate and sound research, the matter of personal experience of adoption needed to be addressed from the outset.

The risk of bias has been addressed by incorporating reflexivity into the methodology. Reflexivity is a research theory and method that originates from anthropology and social theory, however it is universally applicable to all types of research. It encompasses the examination and conscious acknowledgment of assumptions and preconceptions of a researcher which can directly influence the outcome of a study.<sup>3</sup> It is important to incorporate a reflexive element when 'shared meanings, past social engagement and lived experiences of the social world'<sup>4</sup> create the basis for research because of the pre-formulated beliefs one may possess. It requires a researcher to stand back and consider their thinking and then question whether their view of reality is tainted. It then demands critical reflection of the theories which have been drawn from the analysis.<sup>5</sup> By being open and honest about thought processes and conscious biases throughout the methodological and analytical process, they are made transparent to the reader. This in turn sustains ethical, reliable and valid research.<sup>6</sup> The level of reflexivity used in research varies, from the sharing of personal journal entries,<sup>7</sup> to the full disclosure of the psychological and emotional effects of the study on the researcher. Incorporating a personal account of the research process means

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<sup>3</sup> Etherington., K., *Becoming a Reflexive Researcher: Using ourselves in Research*, (2004), p.27.

<sup>4</sup> Elster, J., 'The temporal dimension of reflexivity: linking reflexive orientations to the stock of knowledge, *Distinction*' (2017) 18:3 *Journal of Social Theory* 274 at pp.274-275.

<sup>5</sup> Social Research Glossary, *Reflexivity* <https://goo.gl/drNgnK> (Accessed 28 Feb 2018).

<sup>6</sup> For a helpful example of reflexivity used to make insider researcher bias transparent see, Jenkins, S 'Methodological challenges of conducting 'insider' reflexive research with the miscarriage of justice community' (2013) 16 *International Journal of Social Research Methodology* 373.

<sup>7</sup> This is the methodological approach adopted in this thesis see p.150.

that the researcher is not an invisible aspect of the thesis but is an integral and perceptible part of the finished work.<sup>8</sup>

The motivation to study birth mothers was influenced further by a shortage of socio-legal<sup>9</sup> research into their experiences. Previous studies on birth mothers' experiences by Winkler and Van Keppel, Bouchier et al, Howe et al, Logan and Mason and Selman<sup>10</sup> investigated the psychological and social effects of adoption on birth mothers, but few studies have considered how they experience the operation of the law. This gap in research provides justification for empirical research designed to interview birth mothers to learn how they experienced the operational practice of local authorities, adoption agencies and the courts. The adoptions this research is concerned with are contemporary adoptions, carried out with or without parental consent. They are adoptions of children in whose best interests it has been decided that permanent removal from their birth families is required.

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<sup>8</sup> Behar, R., *The Vulnerable Observer, Anthropology that Breaks your Heart*, (1996), p.14.

<sup>9</sup> British Library, *Socio-legal studies: An introduction to collections* <https://goo.gl/oXxVLZ> (Accessed 2 June 2017).

Socio-legal study is an interdisciplinary approach to analysing law, legal phenomena and the relationship between these and the wider society. Both theoretical and empirical work is included, and perspectives and methodologies are drawn from humanities as well as from social sciences.

<sup>10</sup> Winkler, R., Van Keppel, M., *Relinquishing Mothers in Adoption: Their long-term Adjustment*, (1984). This Australian study influenced researchers in Scotland and the UK to carry out similar research. Bouchier, P., Lambert, L, et al., *Parting with a Child for Adoption, the birth mother's perspective*, (1992) BAAF. This study is carried out under a social work discipline and concerns mothers who parted with a child during the 1960s and early 1970s. Howe, D, Sawbridge, P, et al., *Half a Million Women: Mothers Who Lose Their Children by Adoption*, (1992). Logan, J., 'Birth Mothers and their Mental health: Uncharted Territory' (1996) 26 *British Journal of Social Work* 609. Mason, K, Selman, P., 'Birth Parents Experiences of Contested Adoption', (1997) 21 *The Journal of the Association of British Adoption and Fostering Agencies* pp. 21-28.

Charlton's research into birth mothers' experiences of compulsory adoption found that their needs were ignored and that their views on adoption carried no credibility.<sup>11</sup> More recent observations suggest that attitudes towards them have not improved. Mike Hancock, a birth parent counsellor who has worked with birth parents in the North East for many years, emphasised that birth mothers represent the 'forgotten people' in adoption.<sup>12</sup> Similarly, Memarnia found that birth mothers' emotional reactions to losing their children were treated as insignificant by professionals.<sup>13</sup> It is therefore important to confront this inequality with research which highlights the views and experiences of birth mothers.

Prioritising women's discourses in research is suited to a feminist theoretical stance.<sup>14</sup> Accordingly feminist discourse has influenced the way the birth mothers' stories have been collected, analysed and disseminated. A feminist approach is applicable to research in any discipline that aims to critique or challenge a system which has a bearing on the lives of women. Feminists argue that social science has long focused its' analyses from a male perspective and has sought to answer only questions men require answers to.<sup>15</sup> Of course it is known that adoption profoundly affects women, men and children, but here the focus is deliberately placed solely the experience of birth mothers. This is

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<sup>11</sup> Charlton, L., Crank, M., et al., *Still Screaming: Birth Parents Compulsory Separated from their Children*, (1998), p.5.

<sup>12</sup> Interview by author with Mike Hancock PACUK, (14 April 2015), Adult Services Counsellor. Mike has worked with contemporary birth parents in Leeds, Bradford, Sheffield and Halifax seeing them at community bases and at home. He offers practical support to parents as well as counselling. He runs groups in Sheffield and Leeds as well as providing training for professionals around adoption issues.

<sup>13</sup> Memarnia, N, Nolte, L., et al 'It felt like it was night all the time: listening to the experiences of birth mothers whose children have been taken into care or adopted' (2015) 39(4) *Adoption and Fostering: the journal of the Association of British Adoption and Fostering Agencies* 303 at p.305.

<sup>14</sup> Harding S., *Feminism and Methodology*, (1987), p.6.

<sup>15</sup> Ibid. p.11.

primarily to prevent the accounts of their experiences becoming diluted by that of others.

Research which prioritises the experiences of birth mothers<sup>16</sup> is essential, because adoption research generally focuses on improving outcomes for children and adoptive families. Birth mothers' role in adoption is seen by many as insignificant because the process concerns their children who are no longer in their care. This was emphasised by Howe et al, who found that despite the significant number of women affected by adoption, research has rarely acknowledged their experiences.<sup>17</sup> The absence of research appears as directly relatable to the lack of attention and support birth mothers receive during their children's adoptions. Having no voice in research has meant that their rights and entitlements are too easily ignored by professionals. It was highlighted by Alan Rushton in his 2003 review of adoption research<sup>18</sup> that birth mothers are ignored because the focus of adoption research has always been placed on adoptive families and adopted children. Rushton believes this is so that birth mothers' needs require no acknowledgment by social services.<sup>19</sup>

The absence of birth mothers in research is still evident. The Hadley Centre for Adoption and Foster Care<sup>20</sup> are leading researchers in adoption. Their recent studies, commissioned primarily by the government, focus on adopted

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<sup>16</sup> Birth mothers are those whose children are adopted following their removal by the state due to welfare concerns and are adopted by statutory means either with or without consent from the time that adoption became a child welfare issue during the 1980s.

<sup>17</sup> Howe (1992) p.104.

<sup>18</sup> Note that this research was carried out before the ACA 2002.

<sup>19</sup> Rushton, A., Social Care Institute for Excellence: '*The Adoption of Looked After Children: A scoping review of research*', (2003), pp.34-35.

<sup>20</sup> At the University of Bristol.

children,<sup>21</sup> adoptive families<sup>22</sup> along with work which has focused on aspects of adoption not previously researched, such as adoption disruption.<sup>23</sup> These are the themes that tend to reside in the spotlight of government policy making on adoption.<sup>24</sup> The experiences of birth mothers have always been and still remain inconsequential. Birth mothers' social environments and pathology<sup>25</sup> have previously been examined by Bouchier, Charlton, Neil and Memarnia.<sup>26</sup> Their research shows that gaining knowledge about the social circumstances of women and events which occurred in the periods leading up to and following adoption remain an important aspect of research in this area. If intergenerational family problems are to be addressed before interventions take place, then they must be recognised; and research can provide the requisite knowledge for this.

Little is known about how birth mothers experience the adoptions of their children since the passing of the Adoption and Children Act 2002 (ACA), but previous research has found that unfair treatment of birth mothers is commonplace. Charlton found that an absence of attention paid to the rights and entitlements of birth mothers renders them the 'most disenfranchised group in

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<sup>21</sup> Watson, D., *Adopted Children's Views on their Life Story Books*, University of Bristol, (September 2015), <https://goo.gl/NwDqcw> (Accessed 17 Dec 2017).

<sup>22</sup> Selwyn, J, Quinton, D., *Costs and Outcomes of Non-Infant Adoptions*, The Hadley Centre for Adoption and Foster Care Studies, University of Bristol, (2002) <https://goo.gl/H3GD6T> (Accessed 17 Dec 2017).

<sup>23</sup> Department for Education, *Beyond the Adoption Order: challenges, intervention and adoption disruption*, (April 2014), <https://goo.gl/apci4H> (Accessed 17 Dec 2017).

<sup>24</sup> See Department for Education, *Adoption a Vision for Change*, (March 2016) [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/512826/Adoption\\_Policy\\_Paper\\_30\\_March\\_2016.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/512826/Adoption_Policy_Paper_30_March_2016.pdf).

<sup>25</sup> In the context of mental, social, or linguistic abnormality or malfunction.

<sup>26</sup> Bouchier (1991), Charlton (1998). Neil, E., 'The Mental Distress of the Birth Relatives of Adopted Children: 'Disease' or 'Unease' (2013) 21(2) *Health and Social Care in the Community* 191, Memarnia (2015), pp.303-317.

child welfare'.<sup>27</sup> Murray Ryburn notes that in court proceedings birth mothers found that professionals originally assigned as helpers assumed the adversarial identity, whilst dissociating women from their families, presenting them as one dimensional 'cases' which served only to highlight their failings.<sup>28</sup> Leading family law and human rights commentator Sonia Harris-Short argues that in order to justify the termination of family life by way of adoption, policy makers 'demonize and marginalize birth parents in the drive to achieve permanency for children'.<sup>29</sup> This stance was evident in a number of public statements made by the former Government Advisor on Adoption Sir Martin Narey, which were arguably aimed at promoting moral panics.<sup>30</sup> Narey expended tragedies such as Peter Connelly's murder<sup>31</sup> by his mother and similar high profile child abuse cases to argue that social workers should pay less attention to trying to keep families together and have more children removed from 'failed families'.<sup>32</sup> Current research has presented evidence suggesting that Narey's vision is not merely an ideology. Professor Brid Featherstone found that birth mothers, in particularly those with mental illness, learning disabilities and experiencing domestic violence, are the most likely group to lose their children, whilst being least likely

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<sup>27</sup> Charlton (1998), p.4.

<sup>28</sup> Ryburn cited in Charlton (1998), p.37.

<sup>29</sup> Harris-Short, S, 'Making and Breaking Family Life: Adoption the State and Human Rights' (2008) 35 *Journal of Law and Society* p.28, at p.30.

<sup>30</sup> The concept of 'moral panic' was first developed in the United Kingdom in the early 1960s, principally by Stanley Cohen. A panic or overreaction to forms of deviance or wrong doing believed to be threats to the moral order. Moral panics are usually framed by the media and led by community leaders' intent on changing laws or practices. Oxford Research Encyclopaedia: Criminology and Criminal Justice, (March 2017) <http://criminology.oxfordre.com> (Accessed 3 April 2018).

<sup>31</sup> The case of 17-month-old boy Peter Connelly who died in Haringey, north London, in August 2007 after suffering a series of injuries inflicted by his carers.

<sup>32</sup> Bingham, J., Barnardo's chief Martin Narey calls for children to be taken away from 'failed' parents at birth, *The Telegraph*, (7 September 2009).



to have their human rights respected in a system where ‘child protection and decision-making processes are highly punitive’.<sup>33</sup>

It has been estimated that historically in the UK around half a million women ‘gave up’<sup>34</sup> a child for adoption.<sup>35</sup> This figure was published in the early 1990s, demonstrating the pervasiveness of adoption during decades when the moral climate deemed childbirth outside of marriage unacceptable. This thesis makes a number of references to ‘historical birth mothers’ and ‘contemporary/modern birth mothers’. The term ‘historical’ is conveyed in the context of women whose children were adopted during the 20<sup>th</sup> century before adoption was utilised by local authorities as a child welfare solution, these latter birth mothers being classed as ‘modern’. Whilst these terms distinguish between two ‘types’ of birth mother, it is recognised that the motives that existed behind the use of adoption did not suddenly change at a specific moment in history; rather there was a gradual evolvement which was influenced by culture, society, politics, research and radical changes to the law.<sup>36</sup> It was during the 1970s that ‘illegitimate’ baby adoption was primarily replaced with adoption of children in care. Thus, the terms ‘historical birth mothers’ and ‘contemporary/modern birth mothers’ are used here to clarify the time periods of women’s encounters with adoption and in some places to offer comparisons in their experiences.

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<sup>33</sup> Featherstone, B., Gupta, A et al. The role of the social worker in adoption – ethics and human rights: An Enquiry, *The British Association of Social Workers*, (2018), p.13 [http://cdn.basw.co.uk/upload/basw\\_55841-1.pdf](http://cdn.basw.co.uk/upload/basw_55841-1.pdf) (Accessed 21 Feb 2018).

<sup>34</sup> This term does not adequately convey the truth that many thousands of women were unwilling to consent to adoption and were forced to relinquish their babies because of the moral and religious intolerance attached to unmarried motherhood.

<sup>35</sup> Howe (1992), p.3.

<sup>36</sup> Compared with earlier times there were major social changes during the 1950s, for a helpful summary on these changes see, Thane, P., Evans, T., *Sinners? Scroungers? Saints?, Unmarried Motherhood in Twentieth Century England*, (2012), p.1-3.

Where historical birth mothers were concerned the solution to birth outside of the sanctity of marriage was often adoption for 'illegitimate' babies who were eagerly taken on by married couples, often those with fertility problems.<sup>37</sup> In 1968 baby adoption peaked with 24,800 adoption orders being granted, compared to 3,000 in 1927.<sup>38</sup> From the late 1960s social change, and different concepts of adoption emerged, with the onset of a more liberal society and less stigma of illegitimacy. Major changes to a vital element of adoption began to develop, from the traditional model of providing a family with a child, to providing a child with a family.<sup>39</sup>

Adoption in Britain became a legal process with the enactment of the Adoption of Children Act 1926. Prior to this, the custom of *de facto* adoption was a social provision which provided no statutory or common law protection for adoptive parents in the event of natural parents 'reclaiming' their children.<sup>40</sup> Since the 1926 Act there have been a number of official inquiries and reform of adoption law, but the fundamental principles remain static. These being that adoption is only legal where a judicial decision has resulted in an adoption order being made, which transfers all parental rights and duties to another person.<sup>41</sup>

Contemporary adoption concerns the adoption of children from state care, those who the courts have deemed to have suffered significant harm<sup>42</sup> in the care of their parents and cannot safely be returned to them. Much research has been

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<sup>37</sup> Herring, J., *Family Law*, (2015), p.681-682.

<sup>38</sup> Bridge, C, Swindells, H., *Adoption: The Modern Law*, (2003) p.6.

<sup>39</sup> Gilmore, S, Glennon, G., *Hayes and Williams' Family Law*, (2012) p. 670.

<sup>40</sup> Ibid.

<sup>41</sup> Bridge (2003), p.4.

<sup>42</sup> Significant harm is one of the limbs to proving that the threshold criteria under section 31(2) of the Children Act 1989 are met, before a court can consider whether to make a care order or supervision order.

carried out to understand the nature of family problems that cause children to be removed from their parents and become 'looked after' by the state.<sup>43</sup> The findings are invariable and well documented. In 1999 Cleaver et al found that almost three quarters of the children in their study had been living with past or current domestic violence, parental mental illness and substance misuse, often in combination.<sup>44</sup> In 2008, Judith Masson completed a care profile report concerning around 400 care cases.<sup>45</sup> She found that over half the children were cared for by their mothers alone, and of that sample, 72 per cent of women were experiencing between one and three issues including mental illness, substance abuse, learning difficulties, domestic violence and a chaotic lifestyle. In 79.6 per cent of cases, allegations made against mothers which concerned the care of their children included: neglect, inconsistent parenting/emotional abuse, physical abuse/over chastisement and problems regarding school attendance.<sup>46</sup> It is not always the case that children in these circumstances will be adopted, some will remain in care, whilst others will return to their families. However, a significant number of children are adopted from care. The number of looked after children ceasing to be looked after due to adoption increased between 2011 and 2015 from 3,100 to a peak of 5,360.<sup>47</sup>

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<sup>43</sup> This is the terminology that has tended to replace that of children 'in care'.

<sup>44</sup> Cleaver, H., Unell, I. and Aldgate, J. *Children's needs – parenting capacity*, London: TSO (1999).

<sup>45</sup> Masson, J., Pearce, J et al., Care profiling study, *Ministry of Justice Research Series 4/08* March 2008 University of Bristol, <https://goo.gl/aAZq56> (Accessed 27 Feb 2018).

<sup>46</sup> Ibid. pp.19-20.

<sup>47</sup> Department for Education, National Statistics, Children looked after in England (including adoption), year ending 31 March 2017, (SFR 50/2017, 28 September 2017) <https://goo.gl/epxZhn> (Accessed 26 Feb 2018).

The use of adoption for children in care was initially recommended by the Curtis Report on the Care of Children in 1946<sup>48</sup> There was further review of adoption practice by the Houghton Committee in 1969,<sup>49</sup> which brought into the spotlight that children should be the focus of adoption. The report proposed that adoption could be used to provide permanence for children in the care of the State. This recommendation was provided for in the Children Act 1975. The Act was later consolidated into the Adoption Act 1976. The Act maintained principles created by the Adoption of Children Act 1926, thus preserving the complete and lifelong severance of parental responsibility and the creation of a new legal family.<sup>50</sup>

The labour government carried out a review of adoption policy and process in 2000. This led to the White Paper *Adoption: A New Approach*.<sup>51</sup> The government promoted the reforming of the existing adoption system with many significant measures to make the adoption procedure more transparent and to harmonise the adoption legislation with the Children Act 1989, placing the welfare of the child as paramount importance. The ACA was the legislative outcome, with full implementation occurring in 2004.

Since 1997, adoption has been promoted by government policy as preferable to state care for children under the justification of 'evidence base policy making'.<sup>52</sup> However, Jane Lewis argues that a great deal of the research evidence in favour of adoption was heavily influenced by family values, child protection scandals

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<sup>48</sup> Care of Children Committee (1946) *Report of the Care of Children Committee*, Cmd. 6922 London: His Majesty's Stationery Office.

<sup>49</sup> Report of the Departmental Committee on the Adoption of Children, Cmnd 5107 (1972).

<sup>50</sup> Bridge (2003), p.8.

<sup>51</sup> Department of Health., *Adoption: A New Approach*, (Dec 2000, CM517) [http://dera.ioe.ac.uk/2241/1/dh\\_4080512.pdf](http://dera.ioe.ac.uk/2241/1/dh_4080512.pdf) (Accessed 13 Dec 2017).

<sup>52</sup> Lewis, J., *Adoption: The Nature of Policy Shifts in England and Wales 1972–2002*, (2004) 18 *International Journal of Law, Policy and the Family* 235, at p.239.

and problems within the child care system; with academics ‘disagreeing strongly on what is best for children’.<sup>53</sup> This point is reiterated by Jonathan Herring who argues,

‘Studies [into adoption] tend to suggest adoption is beneficial, but the picture is not straightforward and much more research needs to be done before we can confidently assert that adoption is superior to, for example, long term fostering’.<sup>54</sup>

Since adoption became a child welfare solution, the UK has achieved one of the world’s highest adoption from care rates.<sup>55</sup> Adoptions of children increased from 32 per cent in 1995 to 60 per cent in 2006. Between the 31 March 2005 and the 31 March 2016, approximately 45,766 children have been adopted from care in England and Wales.<sup>56</sup> Whilst some of these children will share the same mother, it cannot be ignored that a considerable number of women who lose their children by way of what has been referred to as ‘the state’s most forceful intervention’<sup>57</sup> remain, for the most part, invisible.

Despite the UK being one of the world’s most prolific user of adoption, successive governments have attempted to increase adoption for children in state care. Herring notes these attempts have not been overly successful in achieving the desired annual rise of children leaving care into adoptive homes.<sup>58</sup> In 2002, 5,680 adoption orders were made. By 2011 the number had fallen to

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<sup>53</sup> Ibid.

<sup>54</sup> Herring (2015), p.682.

<sup>55</sup> Tolson, R., ‘Goals and the Team’s Performance’, (2002) 32 *Family Law* 491 at p.491.

<sup>56</sup> A National Voice, *Adoption Statistics* <https://goo.gl/wsvZPa> (Accessed 11 Dec 2017) Adoption UK, *Adoption Facts and Figures for England* (2017) <https://goo.gl/AYxJ74> (Accessed 11 Dec 2017). Gov.UK, *Children’s Social Care Statistics* (31 August 2017) <https://goo.gl/HFJBCh> (Accessed 11 Dec 2017). Coram BAAF, *Adoption and Fostering Academy Looked after children, adoption and fostering statistics for England* (2017), <https://goo.gl/1wP46U> (Accessed 6 Sept 2017).

<sup>57</sup> Charlton (1998), p.3.

<sup>58</sup> Herring (2015), p.681.

4,734. In 2016 the number of adoptions fell for the first time since 2011, by 12 per cent, and in 2017 the number of looked after children adopted had fallen again, by 8 per cent to 4,350.<sup>59</sup> In recent years, government policy has continued to promote new methods aimed at both reducing the time children spend in care and increasing adoption. One such method was the ‘foster for adoption’ plan, which is entrenched in section 2 of the Children and Families Act 2014<sup>60</sup> (CFA). The CFA introduced an amendment to the CA 1989 with the aim of making the adoption of looked after children timelier, by placing them with foster parents who are approved as adopters as soon as they enter care. In *Action Plan for Adoption*, the Government set out the intentions of the ‘Foster for Adoption’ Clause,

‘Wherever a local authority has decided that adoption is the plan for a child, they should aim to place that child as early as possible with the carers who are likely to become their adoptive parents. This can never pre-empt a court’s decision that a child should be adopted, but it means that whether or not the child is adopted, they should suffer less trauma from disruption. Their needs for contact and the likelihood of a return to their birth family will vary in each case’.<sup>61</sup>

Section 2 effectively permits local authorities to place children with potential adopters at the moment they enter care, pre-empting any judicial authority to make a placement order under ACA s21(1). Understandably the ‘foster for adoption’ provision caused concern amongst non-government organisations, including the Family Rights Group, the Fostering Network, the Grandparents

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<sup>59</sup> Department for Education, National Statistics, Children looked after in England (including adoption), year ending 31 March 2017, (SFR 50/2017, 28 September 2017).

<sup>60</sup> Section 2 amends CA s22(C) to insert a new section, where the local authority are a local authority in England and (a) are considering adoption for C or (b) are satisfied that C ought to be placed for adoption but are not authorised under s 19 of the Adoption and Children Act 2002 (placement with parental consent) or by virtue of s 21 of that Act (placement orders) to place C for adoption.

<sup>61</sup> The Department for Education, *An Action Plan for Adoption: Tackling Delay*, (2011), p.25, <http://publications.education.gov.uk>

Association and Action for Children. The Family Rights Group argued the reforms represented ‘a major increase in the State’s powers over families’ lives’.<sup>62</sup> During the House of Commons briefing on the Clause, they made it clear that,

‘We support the Government’s intention to minimise disruption for children, and to enable them to secure attachments as early as possible. However, we fear that as drafted, the foster for adoption provisions are fundamentally flawed and will work to the actual detriment of some of the most vulnerable children’.<sup>63</sup>

Despite rhetorical statements made by the Children’s Minister Edward Timpson<sup>64</sup> on the likelihood of the adoption reforms helping ‘the 6000 children needing loving homes’ and ‘this is an opportunity to make real progress in this area’,<sup>65</sup> it is evident from the statistics that there has been no momentous rise in the number of adoptions to date.

Adoption will be extensively examined elsewhere in the thesis, but it is helpful to summarize the central issues here:

- Adoption has always been and remains controversial. The drive to increase adoption and ‘fast track’ the entire adoption process to have children adopted as quickly as possible has met with disquiet and calls to ensure adoption is always truly carried out in a child’s best interests.<sup>66</sup>
- An adoption order terminates the legal relationship between a child and his birth parents. It is permanent and irrevocable. The adopters become the child’s legal parents, as if the child had been born to them. This ideal is said to remain important to adopters, but it has been challenged in recent times, as the idea of more open adoptions, which maintain links with birth families has been promoted. Traditional adoption sits

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<sup>62</sup> Children and Families Bill, The Family Rights Group Newsletter, (Spring 2013), <http://hosted.verticalresponse.com/800035/3e927cefb> .

<sup>63</sup> The Family Rights Group, *Children and Families Bill 2013*, Briefing on Fostering for Adoption Clauses 1 and 6, House of Commons Committee stage, (March 2013), p.2

<sup>64</sup> Who announced in the Ministerial Forward of *an Action Plan for Adoption* that he himself was adopted as a baby.

<sup>65</sup> *An Action Plan for Adoption* (2011), p.25.

<sup>66</sup> Harris-Short, S, Miles, J., et al., *Family Law: Text Cases and Materials*, (2015), p.903.

uncomfortably alongside new open adoption concepts, but the severance of birth parents' rights is said to be a key issue in encouraging adopters to come forward.<sup>67</sup>

- Wherever a decision is made concerning the adoption of a child, his or her welfare is the paramount consideration. Parental consent to adoption can be dispensed with if the child's welfare requires it. This approach has generated a great deal of debate as to whether sufficient consideration has been afforded to the rights of birth parents.<sup>68</sup>

The substantive law governing adoption is found in the ACA. The Act will provide the theoretical basis for legal analysis of birth mothers' experiences of adoption. The ACA is examined in detail in the following chapter. When the ACA was passed the government announced a number of essential values administering the law and practice under the ACA, these are:

- Children have the right to grown up within a loving family which can meet their needs in both the short and long term.
- Where possible children are best raised by their own birth family.
- The wishes and feelings of the child will be actively sought and listened to at all stages of adoption.
- The ethnic origins, cultural background, religion and language will be recognised, valued and promoted in the decision making process.
- The role of adoptive parents will be valued and respected.<sup>69</sup>

With the exception of point two, it can be seen that these core philosophies behind the creation of the ACA make little reference to birth parents. Therefore, attempting to assess how the ACA and related subordinate legislation<sup>70</sup> measure up in respect of birth mothers' experiences of the law was challenging. To

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<sup>67</sup> Herring (2015), p.681.

<sup>68</sup> Harris-Short (2015), p.903.

<sup>69</sup> Department of Health (2014b) *Adoption National Minimum Standards*, London.

<sup>70</sup> The Adoption Agency Regulations 2005 (AAR), the Adoption Support Services Regulations 2005 (ASSR) and the National Minimum Standards 2014 (NMS),



address these limitations, a broad range of research questions were developed which focused on both the statutory provisions which apply directly to birth parents and more general questions related to adoption processes. For example, how did birth mothers perceive and experience the legal process of adoption and what were their experiences of the adversarial court process. In respect of the ACA provisions, questions concern being given notice of the plan for adoption,<sup>71</sup> their consent<sup>72</sup> or opposition to placement for adoption,<sup>73</sup> their involvement in the decision making process,<sup>74</sup> goodbye contacts,<sup>75</sup> life story books,<sup>76</sup> counselling,<sup>77</sup> and post-adoption contact.<sup>78</sup> In addition to asking participants about their experiences within the parameters of the law, they will have the opportunity to talk about what happened to them and their families when Children's Services became involved with them; why they felt adoption was the outcome and any views they hold on stigmatizing. This ensures the research maintains a socio-legal context, which aims to provide an inclusive picture of birth mothers lives rather than a one-dimensional account of their child's adoption.

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<sup>71</sup> AAR regulation 19(3) provides that the adoption agency must, if their whereabouts are known to the agency, notify in writing the parent or guardian. Under AAR regulation 14 birth parents must be consulted about the plans to adopt their child.

<sup>72</sup> ACA s52.

<sup>73</sup> ACA S52(1)(b).

<sup>74</sup> This will be considered in detail in chapters five and six.

<sup>75</sup> 'Goodbye contacts' between children and their birth parents are not legal requirements but are still considered to be of importance to children's welfare. See Tip Sheet, preparing for the "goodbye" visit, <https://goo.gl/jEizS2> (Accessed 19 Nov 17).

<sup>76</sup> The opportunity for birth parents to make a life story book is a requirement under Standard 2 of the NMS.

<sup>77</sup> The AAR Regulation 14 has the requirement to 'Provide counselling and information for the parent or guardian of the child. Standard 12.6 NMS provides that; 'birth parents will be supported with counselling to play an active part in their child's adoption'.

<sup>78</sup> There is little provision in the ACA for contact following adoption, although s 46(6) provides that the court 'must consider' whether the child's welfare requires ongoing contact.

The overall objective was to approach the research in a manner which avoided interpreting only the views of professional bodies about birth mothers and adoption. Although the results will lack the impartiality that is typical of legal research, it creates the benefit of giving birth mothers the chance to speak first hand of the impact adoption has had upon their lives. It is important that empirical research is carried out into the impact of adoption on affected parties, with the aim of raising awareness and providing a meaningful contribution to the fields of both social welfare and adoption debate. Socio-legal research into birth mother's experiences adds another layer to much needed knowledge about adoption. Alan Rushton argues that along with a need for large scale longitudinal research into adoption 'many smaller-scale studies need to be commissioned to monitor the progress of the various policy and legislative initiatives related to the procedure and practice of adoption'.<sup>79</sup> Accordingly these findings will contribute to our understanding of adoption practice under the ACA from the perspectives of birth mothers.

The thesis is divided into six chapters. Chapter one introduces adoption in a historical context, with analysis of the evolvement of adoption law from a social to a legal provision. This is followed by critical examination of the political influences behind the reform of adoption law, from the passing of the first statute, the Adoption of Children Act 1926, to the enactment of the ACA. The chapter then explores the statutory framework and key legal concepts of the ACA along with contextual case authority. There follows critical discussion of how the current law operates in respect of birth mother's rights and entitlements, with insight from expert commentators on adoption law. Finally, the chapter

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<sup>79</sup> Rushton (2003), p. viii.

considers adoption in a human rights' setting with examination of the Strasbourg jurisprudence, this to appreciate how the Convention rights have been interpreted internationally and in the domestic courts in order to protect the interests of birth parents in adoption proceedings, whilst ensuring the interests of children are paramount.

Chapter two is a review of the applicable literature. It critically examines the legal, social and political concepts of both adoption and birth mothers; with reference to a range of sources from law, social work, psychology and sociology. In contrast to the previous chapter, which focused on political and legal verity, chapter two explores a diverse range of views on the family, marriage, motherhood and adoption, including biographical work by women with personal experience of adoption. It goes on to justify the theoretical basis for the qualitative research with analysis of previous empirical research into the lives of birth mothers from the 1950s to the present day. Earlier research finds a consistent lack of support and disregard for birth mothers' needs in adoption and these findings create the foundation of this thesis. Finally, it investigates the similarities between historical and modern birth mothers with emphasis on the sameness of the emotional impact of adoption and the social stigmatizing they endure; this leads to the identification of a gap in the research where little is currently known about birth mothers' experiences of the law.

Chapter three introduces the methodology including the research design, the methodological approach and the ethical implications of recruitment and data collection. It goes on to rationalise the incorporation of a feminist approach to the research, which sustains a clear focus on women as individuals *and* as a social category. It then critically examines the 'personal experience' element of

the research with supporting arguments for the use of reflexivity as a method of addressing researcher biases that can prevail where there is insider knowledge of a subject. The final part of chapter three defends the use of subjective data with arguments put forward on the validity of presenting narratives in qualitative research with a feminist approach to data analysis, it then maps the journey of data collection from interviews with participants and the proposed methods of data analysis and presentation of the findings.

Chapter four introduces the demographic results from the interviews, providing contextual information about the participants. The chapter presents findings which allow the participants' experiences of adoption to be placed into a wider social context. These findings focus on birth mothers' social circumstances and their perceptions of why adoption was the outcome for their children. This includes an exploration of the concepts of both social and legal stigmatizing from the respondents' points of view and discovers that the collective blaming of birth mothers is closely linked to their stigmatizing and social exclusion.

Chapter five focuses on the findings from the data which are directly referential to the state of the law. It presents the birth mothers' responses to questions in a narrative form which are first contextualised within the legal framework of the ACA, subordinate legislation and where relevant, judicial and academic commentary. Analysis of the results has revealed significant deficiencies in the practice of agencies empowered by the provisions within the ACA. The evidence for this can be seen in a large number of concurring results from individual interviews. These individual, personal accounts are combined in manner which allows a broader picture of adoption practice to emerge.

Chapter six presents an argument, and a critique of the findings. It begins by emphasising the importance of academic research which gives marginalised groups the opportunity to have their stories disseminated to a wider audience. It critically analyses the results from the interview data in relation to existing research on adoption and relatable jurisprudence from the family courts, including the demands of a fair process under the European Convention on Human Rights (ECHR) and the HRA 1998. It considers the issues of local authority complaints processes and remedies that may be available to birth mothers in the event of administrative failures, including a consideration of the state's obligations under Art 3 ECHR when birth mothers are known to be suicidal. The final part summarises recent reform of adoption law which includes judicial authority, along with a reflection on how the law and approaches by the court may impact on future birth mothers in adoption proceedings. The thesis concludes with a summary of the findings, the limitations of the research and recommendations for both considerate practice and further research.<sup>80</sup>

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<sup>80</sup> It is important to note that the Public Law Outline 2014, recent law changes such as in the Children and Families Act 2014, and judicial guidance on adoption practice may have impacted on adoption insofar as several issues identified by the birth mothers in this thesis would no longer apply. In particular, the length of time of care proceedings before placement orders are made and the presentation of evidence before the courts by local authorities in adoption proceedings.

## **CHAPTER ONE: ADOPTION: THE LAW**

### **1.0. INTRODUCTION**

This chapter begins by considering adoption in a historical context, with analysis of the evolvement of adoption law from a social to a legal provision. This is followed by critical examination of the reform of adoption law from the passing of the first Statute, the Adoption of Children Act 1926, to the current law, the Adoption and Children Act 2002 (ACA). The reform was influenced by major social changes, the demand for protection of rights of all those involved in adoption, and the abuse of children in the care of the state. A key issue in law reform has been the progression of children's rights, which have evolved from giving a child to adopters, to giving an adoptive family to a child and the legal principle of paramountcy of the child's welfare. Examination of the political influences behind the law reform allows an appreciation of the deep-rooted tensions and controversies that exist just under the surface of adoption. It has always been and continues to be a highly debated and contentious issue, in particular, because the more recent law reform failed to consider the position of birth parents in any meaningful depth. The chapter goes on to present the statutory framework and key legal concepts of the ACA along with contextual case authority. It then considers how the current law operates in respect of birth mother's rights and entitlements. Finally, there is an examination of adoption in a human rights context with analysis of the Strasbourg jurisprudence and how the Convention Rights are interpreted to protect the interests of birth parents in adoption proceedings, whilst ensuring the interests of children are paramount. It will be seen that the European Court has faced dilemmas in their commitment to

maintaining proportionality and balancing of parties' rights where Article 8 ECHR is concerned. The decisions of the European Court underpin the approaches of the judiciary in the domestic family courts and continue to be highly influential in cases concerning the severing of parental responsibility by adoption.

### **1.1. ADOPTION LAW: A BRIEF HISTORY**

Child adoption is an integral element of UK Civil Law and the Family Justice System. It involves the state, children and their families and as such exists within public child law. Adoption in the UK can only be achieved by a statutory process. The ACA lays down the powers and duties of local authorities, adoption agencies and the courts in respect of adoption. To fully appreciate the current law on adoption it is necessary to look retrospectively at the evolution of child adoption and the development of adoption law. Over history adoption has been reactive to many changes in society, such as the demand for rights of adopters to be legally protected, and later to the failings of the state in respect of the protection of children.<sup>1</sup>

### **ADOPTION AS A SERVICE FOR ILLEGITIMATE BABIES**

The First World War was significant in the advance of legal adoption because of the surge in *de facto*<sup>2</sup> adoption concerning war orphans needing homes. This increase in social adoption, which afforded no legal rights or protection to adoptive parents, led to the demand for adoption legislation from newly formed adoption societies.<sup>3</sup> There was the additional problem of the exploitation and

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<sup>1</sup> For a helpful account on adoption and influences such as protection for rights of adopters and child abuse in care see Bridge (2003) pp.1-27.

<sup>2</sup> A social provision whereby families took in destitute children. In the absence of legal rights adopters could not prevent the natural parents 'reclaiming' the child at any time.

<sup>3</sup> For example, the National Children's Adoption Association established in the early 1920s by Miss Clara Andrews who arranged adoptions for war orphans. Andrews was

sometimes death of children who had been informally adopted. This included the notorious 'baby farming' which involved unscrupulous 'farmers' being paid to care for babies by their desperate mothers when in fact the babies were being neglected or killed.<sup>4</sup> In response to public pressure the Hopkinson Committee were assigned by the Government in 1920 to review adoption.<sup>5</sup> The resulting report recommended that adoption ought to be made legal, in particular to 'protect the rights of those prospective adopters willing to care for children'.<sup>6</sup> Following the Hopkinson report there were several failed attempts to create legislation to safeguard the adoption process.<sup>7</sup>

Increased public interest and further pressure by adoption agencies in the wake of failed attempts at legislation saw the appointment of the Tomlin Committee by the Labour Government in 1924.<sup>8</sup> The Committee, chaired by Mr Justice Tomlin, investigated the current limitations of adoption and subsequently reiterated the view of the Hopkinson report, that there should be legal security for adopters. Despite this, the Committee expressed concern that legal adoption was seen by many as 'an evil' which may 'encourage or increase the separation of the mother and child'.<sup>9</sup> This assertion acknowledged that adoption practice was not focused solely on war orphans needing homes, but on unmarried mothers and their

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instrumental in lobbying the government for new legislation. Keating, J. 'Struggle for Identity: Issues Underlying the Enactment of the 1926 Adoption of Children Act' (Sept 2001) 3 *University of Sussex Journal of Contemporary History* p.2 <https://goo.gl/KCtC7p> (Accessed 3 March 2018).

<sup>4</sup> Thane (2012), p.5-7.

<sup>5</sup> Ibid. p.3.

<sup>6</sup> Bridge (2003), p.4.

<sup>7</sup> Katz, S., Eekelaar, J., et al., '*Cross Currents: Family Law and Policy in the US and England*', (2000), p.310. Between 1924-1925 there were six failed attempts to introduce bills on adoption law.

<sup>8</sup> Bridge (2003), p. 4.

<sup>9</sup> Ibid. p. 5.



illegitimate babies who were 'the silent figures behind the work of adoption agencies'.<sup>10</sup> The Committee therefore recommended that legal adoption should be introduced with 'extreme caution'.<sup>11</sup> The resulting Bill afforded a considered process where it was recommended that adoption should be a matter for a judicial decision and a court order, with the requirement of informed consent of the natural parent. The Bill was eventually drafted to become the Adoption of Children Act 1926 (the 1926 Act) which heralded the beginning of English adoption law. The Act introduced the process of adoption requiring a court order, which severed all parental legal rights and transferred the rights and duties to another person, the so called 'legal transplant'.<sup>12</sup>

The legal transplant model was considered appropriate for the adoption of babies relinquished by unmarried mothers to married, often infertile, couples. No thought was given to the possibility that the child would ever meet, or even know of its birth family. Bridge notes 'adoption practice attempted to prevent biological and adoptive parents from knowing each other's identities, and the law did not require the adopters to tell the child about his biological background'.<sup>13</sup> The 1926 Act required 'competent independent consideration of the child's welfare'<sup>14</sup> but Bridge notes that it was 'minimalist in its approach and did not regulate the adoption process'.<sup>15</sup> It became apparent, that a decade after the act was passed, only one

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<sup>10</sup> Keating (2001), p.3.

<sup>11</sup> Bridge (2003), p.5.

<sup>12</sup> Ibid.

<sup>13</sup> Ibid. p.17.

<sup>14</sup> Ibid. p.5.

<sup>15</sup> Ibid. p.6.

third of adoptions<sup>16</sup> were carried out legally under the act and *de facto* adoptions were still prevalent.

The number of legal adoptions rose in 1946. Historians believe this was pertinent to the legalising of *de facto* adoptions due to the increase in orphans from the Second World War.<sup>17</sup> Following World War Two there was a rise in illegitimacy. Adoption began to be seen as a convenient solution to this social problem, where puritan views of sexual morality were proselytised by the church. It was the church that was commonly involved in the running of unmarried mother's homes, and the adoptions that subsequently took place shortly after the young women who had been sent there gave birth.<sup>18</sup> During the 1950s there were record numbers of complaints against the church for arranging 'private adoptions'.<sup>19</sup> The stigma of having an illegitimate<sup>20</sup> child coupled with hardship and poverty forced many thousands of single women to give up their babies for adoption.<sup>21</sup> These adoptions continued to be carried out under the 'secrecy model'.<sup>22</sup> The child's birth origins were hidden. The law created a myth or 'legal fiction' that the child had been born to the adopters and the natural mother's existence was denied.<sup>23</sup> The trend for baby adoptions became entrenched in adoption practice, by 1951

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<sup>16</sup> In 1927 there were 3000 legal adoptions.

<sup>17</sup> Lowe, N., *English Adoption Law: Past, Present, and Future* in Katz (2000), p.315.

<sup>18</sup> Elliot, S., *Love Child, A memoir of Adoption, Reunion, Loss and Love*, (2005), pp. 24-25.

<sup>19</sup> Thane (2012), p.98.

<sup>20</sup> In 1987 the Family Law Reform Act removed all legal differences between illegitimate and legitimate children.

<sup>21</sup> The lives of poorer unmarried mothers were to become easier in terms of health with the foundation of the NHS in 1948 and in financial terms with the development of the 'welfare state' beginning with the National Assistance Act 1948 which provided for accommodation and welfare benefits, see Thane (2012), pp. 106-112.

<sup>22</sup> Bridge (2003) p.6.

<sup>23</sup> Ibid.

they amounted to 52 per cent of all adoptions. In 1968 this number rose to 76 per cent of all adoptions with 91 per cent of adoptions being of illegitimate babies.<sup>24</sup>

## **ADOPTION AND SECRECY**

In 1939 the law was amended to provide a basic adoption service.<sup>25</sup> These services were expanded with the passing of the Adoption of Children Act 1949.<sup>26</sup> The 1949 Act maintained the secrecy of the previous law.<sup>27</sup> A birth mother could provide consent without any knowledge of the adopter's identities. Bridge notes that this provision not only removed a mother's right to exercise choice in who adopted her child, but it diminished the importance of her free and informed consent as established by the 1926 Act.<sup>28</sup> The Adoption Act 1950 subsequently consolidated the previous law. This was followed by the Adoption Act 1958 which saw local authorities being empowered to provide adoption services in addition to voluntary agencies.<sup>29</sup> As the stigma of illegitimacy lessened, so did baby adoptions. In 1970 baby adoptions were only 39 per cent of the total adoptions<sup>30</sup> Adoption, previously a thriving business for legitimising babies born outside of marriage, was floundering. However, there was a growing awareness about the number of older children spending their childhoods in local authority care. The focus began to shift towards adoption as a potential solution for these children's long-term welfare.<sup>31</sup>

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<sup>24</sup> Ibid. p.6.

<sup>25</sup> Adoption of Children (Regulation Act) 1939.

<sup>26</sup> Introduced as a Private Members Bill by Sir Basil Nield.

<sup>27</sup> Bridge (2003), p.7.

<sup>28</sup> Ibid.

<sup>29</sup> Ibid.

<sup>30</sup> Lowe in Katz (2000), p.319. This figure had dropped to 4 per cent in 1998. The decline in adoptions was also due to availability of contraception, abortion and changes in the social attitude toward unmarried mothers.

<sup>31</sup> Bridge (2003), p.8.

## THE 1970S: A NEW DIRECTION FOR ADOPTION

During the 1970s, public child law was being influenced by local authority practice. New policies encouraged children's services departments to focus on permanency for children in care, and local authorities were empowered to promote adoption practice by placing children for adoption rather than with short term foster carers.<sup>32</sup> Bridge notes that unlike the 'simplistic stereotype of babies being adopted by strangers, these older children had memories and attachments, meaning their placements with adopters was a far more complex procedure'.<sup>33</sup> A new prospect for the use of adoption coupled with ground breaking research in to psychological versus biological parenting<sup>34</sup> led to a review of adoption by the Houghton Committee in 1969. The Committee's subsequent report stated that the child should be the focus of adoption and it recommended that adoption could be used to provide permanence for children in care 'as a well supervised and integrated child care service'.<sup>35</sup> The recommendations were eventually provided for in the Children Act 1975, which, for the first time, allowed adoptees to access their birth records.<sup>36</sup> The Act was later consolidated into the Adoption Act 1976 (the 1976 Act). The 1976 Act incorporated the adoption order, which would operate to extinguish parental responsibility. The order had no time limit and was neither variable nor revocable but required full parental consent. The Houghton Committee had expressed concern about the legal transplant. They noted that it

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<sup>32</sup> Lowe in Katz (2000), p.322.

<sup>33</sup> Bridge (2003), p.31.

<sup>34</sup> The work of Goldstein, Freud and Solnit contributed to the practice of placing older children for adoption. Strauss, P, L., Strauss, J, B., 'Beyond the Best Interests of the Child by Joseph Goldstein, Anna Freud, Albert J. Solnit', (1974) 74:5 *Columbia Law Review* pp.996-1015.

<sup>35</sup> Bridge (2003), p.8.

<sup>36</sup> This provision was influenced by the pioneering work of John Triseliotis who interviewed adopted people in Scotland about their views on knowing their origins, see Triseliotis, J., *In Search of Origins: The Experiences of Adopted People* (1975).

was 'not appropriate' to just assume that a child wanted to lose contact with their parent, or indeed, be adopted.<sup>37</sup> Despite the new provisions for adopted people to have access to their birth details, and the disquiet about closed adoption by the Houghton Committee, the 1976 Act still endorsed the concept that keeping the adoptee's biological truth a secret was a vital ingredient to adoption.<sup>38</sup> The legal transplant and the secrecy model thus provided reassurance to the adoptive parents that the child was their own. There was no risk of birth parents disrupting the placement at any time in the future with blackmail or attempts to alienate the child.<sup>39</sup>

Although the 1976 Act received Royal Assent on 22 July 1976, it was not fully implemented until January 1988. Despite most of the Houghton Committee's recommendations being enacted, Bridge noted that the lengthy period of 'staggered implementation meant the law had not kept up to date with childcare practice, such as openness in adoption'.<sup>40</sup> She observes 'the legislation had a sense of the past about it and was perceived as meeting the demands of an earlier age'.<sup>41</sup> Notwithstanding these criticisms the 1976 Act governed adoption for many years and encompassed the key legal concepts which current legislation has retained.

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<sup>37</sup> Bridge (2003), p 9.

<sup>38</sup> Ibid. p.17.

<sup>39</sup> Thane (2012), p.99.

<sup>40</sup> For example, post adoption contact between children and the birth family. Bridge (2003), p.12.

<sup>41</sup> Ibid.

## 1.2. THE ADOPTION ACT 1976: KEY LEGAL CONCEPTS

As previously noted, an adoption order made under the 1976 Act extinguished parental responsibility and transferred it to the adoptive parents. This order was final and irrevocable. Section 39 provided that a child be as born to the adopters in 'lawful wedlock'. Bridge notes that this was a fiction that needed to be maintained. Accordingly, adoption practice continued to be based on secrecy. It was considered to be of primary importance that the adopters and natural parents had no knowledge of each other's identities and there was no legal requirement for the child to be told of his background.<sup>42</sup>

The adoption order<sup>43</sup> differed from any other child order in that it was not variable or dischargeable. The order required the unconditional consent of the natural mother, alternatively, it could be made where her consent had been dispensed with.<sup>44</sup> Under the 1976 Act the child's welfare was not the paramount consideration. Section 6 provided,

'In reaching any decision relating to the adoption of a child a court or adoption agency shall have regard to all the circumstances, first consideration being given to the need to safeguard and promote the welfare of the child throughout his childhood; and shall so far as practicable ascertain the wishes and feelings of the child regarding the decision and give due consideration to them, having regard to his age and understanding'.

Duncan Bloy suggests this wording was due to what were then perceived as equally important considerations such as interests of the natural parents and prospective adopters.<sup>45</sup> Bridge notes that s6 enabled to courts to consider other

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<sup>42</sup> Bridge (2003), p.17.

<sup>43</sup> Adoption Act 1976 s12.

<sup>44</sup> Ibid. s16(2).

<sup>45</sup> Bloy, D., *Child Law Lecture Notes*, (2012), p.153.

factors in addition to the child's welfare.<sup>46</sup> In *Re D*<sup>47</sup> Lord Simon provided guidance on s6,

'In adoption proceedings the welfare of the child is not the paramount consideration, but it is the first consideration which may well have been no more than elucidatory or confirmatory of the pre-existing law, though the new statutory provisions are explicit that in adoption proceedings it is the welfare of the child throughout childhood that must be considered and not merely short term prospects'.<sup>48</sup>

The 1976 Act required parent(s) to 'agree unconditionally and freely with full understanding of what is involved' before a freeing order or an adoption order<sup>49</sup> could be made. Initially very few orders were made without the required parental consent, and contested adoption was extremely rare.<sup>50</sup> Over time, as adoptions increased, the circumstances in which parental consent could be dispensed with were expanded. The concept of unreasonable withholding of consent was first provided for in the Adoption Act 1949. This was intended to focus the court's decision on the welfare of the child.<sup>51</sup> Prior to 1971, and the influential guidance of House of Lords in *Re W*,<sup>52</sup> parents may not have been found to be unreasonable if they withheld consent. However, the 1976 Act foresaw that in some cases refusal to consent *would be*<sup>53</sup> deemed as unreasonable.<sup>54</sup> This was confirmed in *Re W* where the court constituted a new outlook in respect of 'child

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<sup>46</sup> Bridge (2003), p.14.

<sup>47</sup> *Re D (An Infant) (Parent's Consent)* [1977] AC 602.

<sup>48</sup> paras 160-161.

<sup>49</sup> S18(1). A freeing order enabled parents to relinquish their parental rights at an earlier stage in the adoption process. The rights were transferred to the agency before being passed to adopters a child could be 'freed' for adoption and an adoption order made with no further parental consent. An adoption order made under s16(1).

<sup>50</sup> Bridge (2003), p.15.

<sup>51</sup> O'Halloran, K., *The Politics of Adoption: International Perspectives on Law, Policy and Practice*, (2015), pp.22-23.

<sup>52</sup> *Re W (An Infant)* [1971] AC 682.

<sup>53</sup> Emphasis added.

<sup>54</sup> Bridge (2003), p.16.

centred'<sup>55</sup> decision making. Lord Hailsham felt that a 'reasonable parent' would acknowledge the importance of the child's interests rather than their own views, which although may be reasonable, should come second to the interests of the child.<sup>56</sup> Over the next two decades case-law upheld the principles from *Re W*, namely that the interests of the child were of paramount importance.<sup>57</sup> The House of Lord's interpretation of 'paramount' was defined in *J v C* in 1970<sup>58</sup> where Lord MacDermott declared,

'It seems to me that they must mean more than that the child's welfare is to be treated as the top item in a list of items relevant to the matter in question. I think they connote a process whereby, when all the relevant facts, relationships, claims and wishes of parents, risks, choices and other circumstances are taken into account and weighed, the course to be followed will be that which is most in the interests of the child's welfare as that term has now to be understood. That is the first consideration because it is of first importance and the paramount consideration because it rules upon or determines the course to be followed.'<sup>59</sup>

This early case law appears to embrace the origins of what would later become the overreaching principle in child law, that of paramountcy of the child's welfare and interests.

### **1.3. ADOPTION: THE PROCESS OF REFORM**

Following the passing of the Children Act 1989 (CA 1989), which for the first time in history placed the 'child's welfare as paramount' on a statutory footing, there was a great deal of investment by the Government into review of adoption, primarily because of the general sense that the 1976 Act 'had passed its sell-by date'.<sup>60</sup> Nick Allen maps the reform of the law as a three stage process, with the

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<sup>55</sup> Ibid. p.16.

<sup>56</sup> *Re W (An Infant)* [1971] AC 682 para 693.

<sup>57</sup> Bridge (2003), p.16.

<sup>58</sup> *J v C (An Infant)* [1970] AC 688.

<sup>59</sup> para 713F. The House were interpreting the words '*paramount consideration*' from the now repealed Guardian of Infants Act s1.

<sup>60</sup> Bridge (2003), p.22.



first stage occurring between 1989 and 1993.<sup>61</sup> In June 1989 whilst the Children Bill<sup>62</sup> was being debated, the Minister for Health announced in the House of Commons that the government intended to review adoption law. The Adoption Law Review was subsequently carried out by a working group comprising of officials from the Department of Health, lawyers, civil servants and the Law Commission, with input from interested parties such as the British Agencies for Adoption and Fostering. Over the next two years the review produced four discussion papers.<sup>63</sup> These papers were said to 'reflect very clearly the wide practical effects and implications of the adoption process'.<sup>64</sup>

The *Adoption Law Review* report was published in October 1992, making 45 recommendations for reform of the law. During a debate on the report in the House of Commons one month later, the junior Health Minister Tim Yeo stated that 'the House should be aware that there is no commitment by the government at this stage to proceed with any of the recommendations contained in the report'.<sup>65</sup> Allen believes that it was at this stage that 'one can discern indications of some of the tensions between the government and adoption agencies'.<sup>66</sup> This was evident by Yeo's suggestions that 'there is no room for dogma when dealing with an issue as complex and important as adoption, what is needed is common

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<sup>61</sup> Allen, N., *Making Sense of the New Adoption Law*, (2007) p.2.

<sup>62</sup> Later to become the Children Act 1989. The CA 1989 only made some minor technical amendments to adoption law.

<sup>63</sup> Inter-Departmental Review of Adoption Law, *The Nature and Effect of Adoption* (DoH 1990). Agreement and Freeing, *The Adoption Process and Inter Country Adoption, International Perspectives* (DoH, 1990), Review of Research Relating to Adoption and Inter Country Adoption (DoH, 1990).

<sup>64</sup> Allen (2007), p.3.

<sup>65</sup> *Adoption Law Review* HC Deb vol. 213 cc.1045-76 12 November 1992.

<sup>66</sup> Allen (2007), p.3.

sense, compassion and a sound legal framework'.<sup>67</sup> It was a further year before the Department of Health put forward proposals for law reform. These were contained in the White Paper *Adoption: The Future*.<sup>68</sup> Some of the proposals were based on the previous recommendations of the *Adoption Law Review* and included reform of the administrative process with the setting of a national target of increasing by 40 per cent by 2004-2005 the number of looked after children adopted.<sup>69</sup> The national targets were designed to 'concentrate the minds of local authority managers'.<sup>70</sup> This led to concerns that children had been subsequently placed inappropriately by local authorities in order to meet the said targets. The Government strongly denied these allegations.<sup>71</sup> Allen argues in respect of the targets 'it is not difficult to see how such a policy could have propelled some staff into reaching premature decisions in favour of adoption at the expense of birth families who might have come up trumps given more time'.<sup>72</sup> Similarly, the Local Government Association voiced concerns in a memo to the House of Commons about adoption targets during the passage of the Bill,

'There are real concerns about targets which may rush agencies into placing children for adoption when the best plan, in accordance with the wishes of the child, may be to work with the birth family to enable them to care for their child'.<sup>73</sup>

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<sup>67</sup> Tim Yeo MP, *Hansard* (House of Commons) col 1046. 12 November 1992.

<sup>68</sup> *Adoption: The Future*, Cmnd. 2288 (1993).

<sup>69</sup> Allen (2007), p.57. The 40 per cent target was incorporated into the DoH Public Service Agreement.

<sup>70</sup> Allen, N., (2003) p. 61.

<sup>71</sup> BBC News, *Forced adoption claims dismissed*, (February 2008) <https://goo.gl/Sg6Zau> (Accessed 12 Jan 2018).

<sup>72</sup> Allen (2007), p.62.

<sup>73</sup> Local Government Association, Memorandum submitted to the Select Committee on the Adoption and Children Bill (April 2001).

Along with the administrative reform, a number of the new recommendations required an Act of Parliament. Accordingly, the Department of Health stated that primary legislation would amend the 1976 Act within a year.<sup>74</sup>

Allen identifies the second stage of law reform as occurring between 1994 and 2000. There was the expectation that an Adoption Bill would appear in line with the Department of Health's earlier promise, and the fact that the *Adoption Law Review* had brought adoption into the spotlight where it had gained public and professional interest.<sup>75</sup> Finally, in 1996, the Department of Health published adoption guidance, which was directly applicable to local authorities,<sup>76</sup> and a draft Adoption Bill. The Bill contained 104 highly detailed clauses. It was believed that the Bill rendered new legislation as imminent, but what transpired were a number of regulations<sup>77</sup> which reformed the duties of adoption agencies.<sup>78</sup> It was at this time that the government lost the general election. Allen notes that 'the party's protracted, and it has to be said, botched attempt to reform adoption law came to an end'.<sup>79</sup>

Following the 1997 general election, the Labour party enjoyed a great majority in the House of Commons. This allowed the government's legislative agenda to push easily through Parliament. Despite this, by 1998, there was no sign of new adoption legislation. The Department of Health informed Parliament it had no time

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<sup>74</sup> Allen (2007), p.3.

<sup>75</sup> Ibid. p.4-5.

<sup>76</sup> Ibid. p.4.

<sup>77</sup> Made in Feb 1997.

<sup>78</sup> According to the Secretary of State for Health the regulations introduced more independence and transparency to adoption agencies.

<sup>79</sup> Allen (2007), p.5.

to reform adoption.<sup>80</sup> However, there followed some activity, notably a report produced by a House of Commons Select Committee who put forward the view that many more children in care could benefit from adoption and local authorities should be far more proactive in utilising the service.<sup>81</sup> In response to the Committee's recommendations the circular *Adoption: Achieving the Right Balance* was published.<sup>82</sup> The circular was considered to be 'a fresh approach to policy and practice'; it made it clear that adoption should no longer be regarded as a last option for children in care, because what they required was stable and secure families, which could be made possible by adoption. What the circular did not do however was change the law.<sup>83</sup>

Allen cites the third stage of reform as the period between 2000 and 2001. The crucial influences on this final stage were two previous reviews into child abuse in local authority residential care homes. The first was the Utting Review<sup>84</sup> and the second was the Inquiry chaired by Sir Ronald Waterhouse.<sup>85</sup> Both Inquiries were focused on the exposure of abuse in children's homes in North Wales. Child abuse, carried out primarily by local authority employees, had been occurring since at least 1974, and had continued through the next decade. Preliminary police

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<sup>80</sup> Baroness Jay, *Hansard* (House of Lords) col. 1336. 26 March 1998.

<sup>81</sup> Allen (2007), p.6.

<sup>82</sup> *Adoption: Achieving the Right Balance*, Local Authority Circular (98) 20.

<sup>83</sup> Allen (2007), p.6.

<sup>84</sup> The Utting Report HC Deb vol. 301 cc. 327-38 (19 November 1997).

<sup>85</sup> The Honourable Sir Ronald Waterhouse., *Lost in Care, Report of the Tribunal of Inquiry into the Abuse of Children in Care in the Former County Council Areas of Gwynedd and Clwyd since 1974*, (16 Feb 2000), Publication, HC Session 1999-00 201.

were said to have been met with 'a wall of disbelief and a cult of silence' by social workers and care home staff.<sup>86</sup> The Waterhouse Review *Lost in Care* reported a litany of sexual, physical and emotional abuse of highly vulnerable children. The review made 72 recommendations aimed at 'strengthening selected areas of child care law'.<sup>87</sup> At this time adoption was not on agenda, simply because the Waterhouse Inquiry had not referred to it in its' recommendations. However, two days after the publication of the Waterhouse report, Alistair Campbell, Tony Blair's official spokesperson, made a statement to the effect that the Prime Minister 'viewed the report as dreadful'.<sup>88</sup> A subsequent briefing stated that,

'There were problems in the field of adoption with long, unacceptable delays in adoption of children in care. The average wait for adoption of children in care over the age of five was five years. Work is being done by the Health Department, but the Prime Minister wanted to see whether new adoption laws were required'.<sup>89</sup>

Allen notes that it remains unclear why the Prime Minister linked 'the horrors laid bare in the Waterhouse report'<sup>90</sup> with adoption. Despite the uncertainty around the Prime Minister's motives, both Inquiries mobilized a 'resuscitation of reform plans of the early 1990s'.<sup>91</sup> The Prime Minister's concerns were echoed by the Rt Hon Dame Elizabeth Butler Sloss. In a speech to the Solicitors' Family Law Association she referred to Waterhouse, and the key issue that required acknowledgement; the children concerned had been removed from their parents due to inadequacy of care and had been placed in homes designed to protect them from further neglect and abuse. They had then suffered further serious harm

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<sup>86</sup> Questions and Answers that Surround a Catalogue of Abuse Against Children, *The Guardian*, (16 February 2000).

<sup>87</sup> Allen (2007), p.7.

<sup>88</sup> Ibid. p.9.

<sup>89</sup> Lobby Briefing 11.30 am. Thursday 17 February 2000, 10 Downing Street Newsroom.

<sup>90</sup> Allen (2007), p.8.

<sup>91</sup> Ibid.

inflicted by those authorised to care for them. She went on to identify the problem of vulnerable children 'stuck' in the care system for years, thereafter called 'Drift in Care' which was identified as a major organisational failing.<sup>92</sup>

*Waterhouse* prompted the government to take urgent action. In July 2000 *The Prime Minister's Review* was published<sup>93</sup> followed in December 2000 by the White Paper *Adoption: a new approach*<sup>94</sup> which promised imminent legislation and notably was entirely focused upon the needs of children in local authority care. In the paper's forward, the Prime Minister stated that adoption was blighted with,

'Poor performance and unacceptable delays. In too many parts of the system, there is a lack of clarity, of consistency and of fairness. Most pressing, children in an already vulnerable position are being badly let down. We have to change this. We have to have a new approach to adoption'.<sup>95</sup>

There followed the publication of the Adoption and Children Bill by the Department of Health. The Bill was introduced in the Parliament on 15 March 2001, where the junior Health Minister stated that current legislation was outdated and unsuitable for a modern adoption service. The Bill, he said, was designed to meet the needs of children, families and society.<sup>96</sup> After its second reading the Bill was sent to a Commons Select Committee. Following three public hearings, just prior the Committee reporting its findings to Parliament, there was a general

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<sup>92</sup> Bridge. (2003), p.24.

<sup>93</sup> Following a review by the Performance and Innovation Unit of the Cabinet Office (PIU). *Prime Minister's Review of adoption* (PIU Report, July 2000). The review acknowledged that adoption was no longer about baby adoptions but was concerned with providing homes for vulnerable children in state care.

<sup>94</sup> Department of Health, *Adoption a New Approach*, December 2000 (Cm 5017).

<sup>95</sup> Ibid. p.3.

<sup>96</sup> Hansard (*House of Commons*) 26 March 2001, col. 698.

election.<sup>97</sup> As such there was a delay of several months<sup>98</sup> before the Secretary of State for Health introduced the Adoption and Children Bill in the House of Commons.

In November 2001 debate on the Bill began. This would result in 24 sittings of a Special Standing Committee which was chaired by David Hinchcliffe.<sup>99</sup> Witnesses contributing to the debate included the Department of Health, the Lord Chancellors Department and a large representation of adoption agencies such as Barnardo's and the NSPCC.<sup>100</sup> On the Bill's first report day, on the 20 March 2002, there were 90 amendments and four new clauses. The delay of four months was pertinent to 'raging debate'<sup>101</sup> on one of the new clauses, this the extension of joint adoption to unmarried and same sex couples. The issue of characteristics of would-be adopters is outside the scope of this thesis; however, it is notable because it caused significant dispute between the government and the House of Lords, who, in vetoing the clause and restricting joint adoption to married couples, were said to have 'defeated what had come to be seen as a lynch pin of the Governments strategy for moving children out of public care'.<sup>102</sup> Bridge notes that this impasse created 'a media frenzy with a social, moral and political mixture';<sup>103</sup> and, that the matter became 'a highly politicised symbolic struggle between left and right'<sup>104</sup> which, on reflection, may have risked losing sight of the objective of the Bill, that of children's welfare. Despite the protracted conflict,

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<sup>97</sup> In May 2001.

<sup>98</sup> The Bill was introduced in the labour Government's second term of office on 19 October 2001.

<sup>99</sup> The Labour MP for Wakefield.

<sup>100</sup> Bridge (2003), p.25.

<sup>101</sup> Ibid.

<sup>102</sup> Ibid.

<sup>103</sup> Ibid. pp.26-27.

<sup>104</sup> Ibid. p.27.

Parliament subsequently supported the government's amendments on the 5 November.<sup>105</sup> The Adoption and Children Bill received Royal Assent on 7 November 2002. The Adoption and Children Act became partially operational early in 2004 with the remainder coming into effect by September 2005.<sup>106</sup>

Commenting on the 'extraordinary saga' of adoption law reform, Allen notes that two important themes emerged. The first was the escalation of public and media interest which flowed from it being in the political spotlight. Secondly, although public interest was a welcome change from the exclusivity and secretiveness of earlier adoption, there was also a negative consequence to the discovery of the subject by politicians and media.<sup>107</sup> According to Allen this mass attention paid to adoption led to 'a gross over-simplification of what is an extremely complex process'.<sup>108</sup> Arguably these themes reoccur each time new adoption policy is promoted, with inadequate consideration given to the potential long-term impact of adoption on those directly affected by it.<sup>109</sup>

#### **1.4. THE DIMINISHING IMPORTANCE OF THE BIRTH FAMILY**

The reform process was rightly aimed at promoting the welfare of some of the most vulnerable children in society. Allen notes that prospective adopters also stood to gain from 'the universal sympathy they attracted from the media',<sup>110</sup> insofar as much criticism was aimed at local authorities by Parliament and the

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<sup>105</sup> A majority of 31 peers supported the government's amendment to extend the categories of people able to apply to adopt children.

<sup>106</sup> O'Halloran (2009), p.134.

<sup>107</sup> Allen (2007), p.9.

<sup>108</sup> Ibid.

<sup>109</sup> For example: adoption breakdown, there is little research and no official statistics on the rate of breakdown. One study found 8 per cent broke down after an order was made. Another found it was 20 per cent. Herring (2011), p.692 argues it is crucial that the Government's attempts to increase the number of adoptions do not lead to an increase in the rate of breakdown.

<sup>110</sup> Allen (2007), p.10.



press for obstructing adoption applications and placing unfair restrictions on who may be suitable to adopt. Conversely, throughout the course of reform, barely any reference was made to birth parents. Allen points out that they were the real losers in the political dispute.<sup>111</sup> Any attempts to bring their needs into discussions were dismissed, with claims that social workers were placing too much emphasis on keeping children with their birth families and indeed too much attention was being paid to birth parents' rights *per se*.<sup>112</sup> Adoption was firmly identified as a panacea within the child care system, 'with its warming vision of damaged children being taken in by caring families, an alternative family rather than help for the existing family'.<sup>113</sup> This, Bridge argues 'was the clear objective',<sup>114</sup> which was evident in the wake of the Waterhouse Inquiry. The Performance Innovation Unit report of 2000 stated that primary reasons for children waiting too long for adoptive families were: social workers focusing on rehabilitating children with their birth parents and 'misplaced attempts of the courts to give the benefit of the doubt to birth parents' by ordering that children be returned to them.<sup>115</sup> During the second reading of the Adoption and Children Bill in the House of Lords, Lord Hunt stated 'all too often adoption is seen as a last resort when it should have been considered as a first resort'.<sup>116</sup> Bridge noted in response to Lord Hunt's statement that if adoption became a first resort then the interests of birth parents would 'plummet further and be left floundering as a mere by-product of the race to move children out of care'.<sup>117</sup> In this context, McEwan-Strand and Skivenes argue that

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<sup>111</sup> Ibid. p.11.

<sup>112</sup> Ibid.

<sup>113</sup> Bridge (2003), p.33.

<sup>114</sup> Ibid.

<sup>115</sup> Performance Innovation Unit Report, July 2000, at paras 3.28-3.50.

<sup>116</sup> HL Deb Vol 636 cols. 20-21 10 June 2002 per Lord Hunt of Kings Heath.

<sup>117</sup> Bridge (2003), p.53.

‘strong child centrism in a state creates tensions between groups of citizens, because children’s rights challenge the traditional understanding of families, and the relationships between the family and the State’.<sup>118</sup> Thus, it follows that a child centric state strengthens the protection of children’s rights, but risks the deterioration of parental and family rights.

In contrast, the CA 1989 emphasised the fundamental importance of birth families and parental responsibility. The CA strongly portrayed the message that the best place for children was with their birth families, with support provided by non-interventionist local authorities where necessary. Rather than focus on permanent alternative families for children in care, foster care was utilised more often than adoption.<sup>119</sup> The refocussing debate during the 1990s, and the Labour Government policies of Early Intervention, led to the incorporation of a more holistic social work assessment designed to consider all aspects of a child’s life and circumstances. Social workers’ responses to a child at risk referral moved away from a child protection focus because it was criticised as being harmful and inappropriate. The new approach was a ‘safeguarding assessment’ to establish whether a child was in need. This assessment included the child’s family. Wherever possible the child and his family would be supported to remain together or the child would stay in long term foster care which sustained the link to their birth family.<sup>120</sup> The discernible change in attitude towards adoption was evident in the White Paper *Adoption: A New Approach* where new research had found

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<sup>118</sup> McEwan-Strand, A., Skivenes, M., ‘A Child-Centred Court of Human Rights? Strand Lobben v. Norway’ *Centre for Research on Discretion and Paternalism*, University of Bergen, (3 Jan 2018), <https://goo.gl/c2Bm5G> (Accessed on 17 March 2018).

<sup>119</sup> Bridge (2003), p.34.

<sup>120</sup> Devine, L., *The limits of state power & private rights: exploring child protection & safeguarding referrals and assessments*, (2017), p.75.

‘that children who are adopted generally make very good progress through their childhood into adulthood and do better than children who have remained in the care system for their childhoods’.<sup>121</sup>

Case law during the 1980s and 1990s harmonised with the underlying principle of the CA where the value of natural parents raising their child was concerned. In *Re KD*<sup>122</sup> Lord Templeman declared,

‘The best person to bring up a child is the natural parent. It matters not whether the parent is wise or foolish, rich or poor, educated or illiterate, provided the child’s moral and physical health are not endangered. Public authorities cannot improve on nature’.<sup>123</sup>

Referring to Lord Templeman’s judgment, Jane Fortin suggests it was ‘a stirring reminder of the naturalness of the parent child relationship’.<sup>124</sup> This, Fortin notes, was evidence of jurisprudence that emphasised the importance of the biological relationship between parent and child between 1980 and the late 1990s.<sup>125</sup> This was exemplified in *Re K*<sup>126</sup> by Butler-Sloss LJ who stated ‘the mother must be shown to be entirely unsuitable before another family can be considered, otherwise we are in grave danger of slipping into social engineering’.<sup>127</sup> In *Re M*<sup>128</sup> the Court of Appeal paralleled the child’s welfare with being raised by his natural parents even where it was clear the child was strongly attached to foster parents.<sup>129</sup> Fortin believes that the judiciary’s leaning towards what has been called the ‘natural parent presumption’ was based on two factors: The first was

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<sup>121</sup> Adoption: A New Approach at 1.12.

<sup>122</sup> *Re KD (A Minor) (Ward: Termination of Access)* [1988] AC 806.

<sup>123</sup> para 62.

<sup>124</sup> Fortin, J., ‘*Re D (Care Natural Parent Presumption)* – Is Blood Really Thicker than Water? (1999) *Child and Family Law Quarterly* 435 at p.437.

<sup>125</sup> Ibid.

<sup>126</sup> *Re K (A Minor) (Wardship: Adoption)* [1991] 1 FLR 57.

<sup>127</sup> para 62.

<sup>128</sup> *Re M (Child’s Upbringing)* [1996] 2 FLR 441.

<sup>129</sup> Bridge (2003), p.51.

the concern that favouring foster carers who were usually educated with financial security, over birth parents who were typically disadvantaged, risked being criticised as social engineering.<sup>130</sup> This theory was evident in *L (Children)*<sup>131</sup> where Wall LJ stated,

‘If it were a choice of balancing the known defects of every parent with some added problems against idealised perfect adopters, in a very large number of cases children would immediately move out of the family circle and toward adopters. That would of course be social engineering’.<sup>132</sup>

Fortin suggests that the second factor was the concept of a child’s right to be raised by his or her birth family.<sup>133</sup> However, she concludes with the argument that the natural parent presumption ultimately began to weaken and there was clear evidence that the judiciary were looking towards favouring psychological over biological parenting.<sup>134</sup> This was seen in *Re A*<sup>135</sup> where the court favoured prospective adopters over the birth mother. Sumner J felt that the child would suffer psychological harm if he was removed from the adopters and returned to his birth mother, thus placing the child’s welfare above his right to be raised by his natural mother.

In her analysis of the reform of adoption law, Bridge notes that the early principles behind the CA 1989 were the importance of keeping families together, even where children were in care parents still held parental responsibility. The early process of adoption reform during the 1990s emphasised that only some children would benefit from adoption, those who ‘were unable to return to their birth

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<sup>130</sup> Fortin (1999), p.427.

<sup>131</sup> *L (Children)* [2006] EWCA Civ 1282.

<sup>132</sup> para 51.

<sup>133</sup> Which is consistent with the child’s right to respect for private and family life under Art 8. ECHR. Fortin (1999), p.437.

<sup>134</sup> Ibid. p.441.

<sup>135</sup> *Re A (Adoption: Birth Mother’s Objections)* [2000] 1 FLR 665.

families'.<sup>136</sup> Adoption was always going to be a last resort. However, by 2000 the birth families' significance 'began to recede'.<sup>137</sup> Bridge points out that whilst government policy was not explicit in its intention to overwrite the importance of the natural family, it could be discerned by reading between the lines.<sup>138</sup> For example, *Adoption: A New Approach* put forward the view that 'local authorities may sometimes work to keep a child with an unsatisfactory family for too long when it would be better to apply to the court for an order authorising an alternative family placement'.<sup>139</sup> Commentators point out that by the time the ACA was passed 'the strong message was that adoption, and quickly, was the next best option to growing up within the birth family'.<sup>140</sup> A close analysis of the Parliamentary debate throughout the passage of the Bill revealed the entire focus was on moving children out of care and into adoptive homes. There was no attention given to measures that may help birth parents and their children remain together.<sup>141</sup> This thinking is in stark comparison to Part III of the CA, which encompasses wide ranging provisions of support for children and their families. The exclusion of the birth family Bridge argues was entirely motivated by the government's aim to speed up the rate which children left the public sector and transferred to the private sector, this being the adoptive home.<sup>142</sup>

Research carried out on behalf of the Department for Education has found that 'adoption offers tremendous advantages for maltreated children who cannot

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<sup>136</sup> Bridge (2003), p.52.

<sup>137</sup> Ibid.

<sup>138</sup> Bridge (2003), pp.52-53.

<sup>139</sup> *Adoption: A New Approach*, para 3.16.

<sup>140</sup> Bridge (2003), p.53.

<sup>141</sup> See Bridge (2003), p.53 and Allen (2007), p.62.

<sup>142</sup> Bridge (2003), p.53.

return home'.<sup>143</sup> However, the drive to have more children adopted quickly has attracted criticism. Some commentators believe that adoption is not entirely the child centred policy the state has promoted. Family law barrister Charlotte Proudman argues that adoption has manifested as the punishment of a certain class of parent for not being good enough to raise a child to an ideological standard.<sup>144</sup> Finola Moss calls adoption 'draconian and unsupportive and based upon the presumption that adoption *per se* will be in a child's welfare'.<sup>145</sup> Leading family lawyer Andrew Bainham believes that cutting all parental ties by adoption is not for the child's benefit, but to reassure potential adopters that birth families will have no future say in their child's life.<sup>146</sup>

## 1.5. THE ADOPTION AND CHILDREN ACT 2002: KEY PRINCIPLES

In *Re F*<sup>147</sup> Lord Justice Wall said this about the purpose of the ACA,

'It is not, I think, controversial to say that the 2002 act had four main objectives. The first was to simplify the process. Second was to enable a crucial element of the decision-making process to be undertaken at an earlier stage. The third was to shift the emphasis to a concentration on the welfare of the child; and the fourth was to avoid delay'.<sup>148</sup>

The ACA aligned adoption law with the CA 1989 making the child's welfare the paramount consideration in all decisions made about him.<sup>149</sup> Sections 1(1) and 1(2) provide that 'whenever a court or adoption agency is coming to a decision, the child's welfare, throughout his life, is the paramount consideration'. This

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<sup>143</sup> Department for Education, Selwyn, J, et al., *Beyond the Adoption Order: challenges, interventions and adoption disruptions*, (April 2014, University of Bristol DFE RB-336).

<sup>144</sup> Proudman, C and Trevena, F., 'Setting Parents up to Fail is Integral to Care Proceedings', (August 2012) *Family Law*, 987 at p.988.

<sup>145</sup> Moss, F., 'Family: A Social Panacea?' (17 April 2009) 158:7364 *New Law Journal* p.1.

<sup>146</sup> Bainham, A. 'Arguments about Parentage' (2008) 67 *Cambridge Law Journal* 322 p.349.

<sup>147</sup> *Re F (Placement Order)* [2008] 2 FLR 550, para 72.

<sup>148</sup> para 72.

<sup>149</sup> CA 1989 s1.

means that the child's welfare will always override the rights or needs of birth parents. The principle of paramountcy has the aim of deterring the court from placing birth parents' rights over the making of an adoption order.<sup>150</sup> The courts ensure the child's welfare is paramount by having regard to the welfare checklist in s1(4). Considerations include: the child's wishes and feelings and the effect on him of ceasing to be a member of his original family, the harm or risk of harm to the child and the relationship of the child with relatives.

The Act introduced new measures for tackling delay for children in care. Section 1(3) provides 'The court or adoption agency must at all times bear in mind that, in general, any delay in coming to the decision is likely to prejudice the child's welfare'.<sup>151</sup> Delay is also addressed in s22(1) which provides 'A local authority must apply to the court for a placement order in respect of a child if the authority is satisfied that the child ought to be placed for adoption'.<sup>152</sup> This principle was recognised by the courts in *Re C (A Child)*<sup>153</sup> where Arden LJ refused to delay an adoption to allow family members to be assessed as carers for the child on the basis that a longer period in care may cause harm to the child.<sup>154</sup>

Children being hindered in the care system has proven to be a significant problem, with many unable to return to their birth families and with little prospect of a timely adoption. They are also often subjected to delayed decision making

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<sup>150</sup> Herring, J., *Family Law*, (2015), p.683.

<sup>151</sup> Dey, I., 'Adapting Adoption: A Case of Closet Politics', (2005) 3 *International Journal of Law Policy and the Family* 289 at p. 293. Dey notes that the reality of the problem of delay in adoption was evident in 1997 when Ealing placed only one child for adoption out of 400 needing permanence.

<sup>152</sup> Delay is also addressed by the establishing of the ACA Register in s125 which suggests links between children and approved adopters.

<sup>153</sup> *Re C (A Child)* [2012] EWCA Civ 1787.

<sup>154</sup> para 46.

by professionals.<sup>155</sup> At 31 March 2017 there were 72,670 being looked after and 3,070 of the 4,350 looked after children who were adopted were aged between one and four years at adoption.<sup>156</sup> Research suggests the best age for a child to be adopted is twelve months.<sup>157</sup> In the year ending 31 March 2017, the average age at adoption was three years and four months. Despite the statutory provisions aimed at fighting delay, children can still wait up to two years and seven months to be adopted.<sup>158</sup> Since the ACA was passed there has been a continued drive towards speeding up adoption. In 2012, the Government proposed that adoption should take place within six months.<sup>159</sup> These policies continue to raise concerns amongst academics. Bainham argues ‘the statutory principle which militates against delay should be applied with extreme caution when adoption is part of a local authority care plan. There should be urgent reconsideration of the doubtful official policy that adoption is always the right solution for looked after children’.<sup>160</sup>

The ACA introduced the placement order, s21(1) provides ‘A placement order is an order made by the court authorising a local authority to place a child for adoption with any prospective adopters who may be chosen by the authority’. Under s24, parents can apply to revoke a placement order if their child has not yet been placed for adoption; and they can show a ‘change of circumstances’ since the placement order was made. But, the permission of the court is required

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<sup>155</sup> Delays in decision making can occur at different stages of care proceedings and can have an impact on children’s chances of stability and permanence, including the chance of adoption. See *Fostering and Adoption, The Impact of and Avoidance of Delay in Decision Making* (2014) <https://goo.gl/JofA3z> (Accessed on 21 March 2018).

<sup>156</sup> Gov.UK, National Statistics, Children looked after in England including adoption: 2016 to 2017, (28 Sept 2017).

<sup>157</sup> Cook, R ‘Adoption: Improving Outcomes’ *Family Law Journal*, (April 2012) p. 21

<sup>158</sup> *Ibid.*

<sup>159</sup> Cook (2012), p.21.

<sup>160</sup> Bainham, A., ‘The Peculiar Finality of Adoption’, (2009) 68:2 *Cambridge Law Journal* 283 at p.285.



before an application can be made. In *B*<sup>161</sup> parents sought permission to revoke a placement order. Cobb J set out the terms of s24, and the two issues that needed to be considered arising from it: whether there had been a change in circumstances since the placement order had been made and whether, if a change in circumstances could be identified, leave should be given to revoke the placement order. Cobb J reiterated the applicable principles: the change in circumstances can be a change in the circumstances of the parent or the child, or generally; the change is not required to be 'significant' and should be set against the finding or threshold upon which the original orders were made so that the test is not set too high. If the court finds that there has been a change in circumstances, the welfare of the child is relevant to the question of whether leave should be given but not paramount.<sup>162</sup>

As with the previous law, the ACA provides that adoption of a child is only accomplished by an adoption order.<sup>163</sup> This order terminates the parental responsibility of a child's birth parents and confers it to adopters. 'Full adoption' under the law provides, in the words of Ormrod LJ in *Re H*,<sup>164</sup> 'total security and makes the child a part of the adoptive family'.<sup>165</sup> The adoption order is irrevocable except in the restrictive circumstance under ACA s55.<sup>166</sup> In *Re B*<sup>167</sup> Swinton Thomas LJ made it clear that,

'There is no case in which it has been held that the court has the inherent power to set aside an adoption order by reason of misapprehension or mistake. To invalidate an otherwise properly made order would, in my

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<sup>161</sup> *B (Application for leave to revoke Placement Order)* [2017] EWFC 26.

<sup>162</sup> paras 19-21.

<sup>163</sup> ACA s46.

<sup>164</sup> *Re H (Adoption: Parental Agreement)* [1982] 3 FLR 386.

<sup>165</sup> para 388.

<sup>166</sup> Which concerns the legitimisation by marriage of a natural parent who has adopted their child.

<sup>167</sup> *Re B (Adoption: jurisdiction to set aside)* [1995] 2 FLR.

view, undermine the whole basis on which these orders are made, namely they are final and for life as regards to adopters'.<sup>168</sup>

There is no other statutory mechanism by which legal adoption may be retracted.

Therefore, the courts are mindful of the seriousness of adoption decisions, as Wall LJ stated in *Re P*<sup>169</sup> 'there is, perhaps, no more important or far reaching decisions for a child than to be adopted by strangers'.<sup>170</sup>

Parental consent has historically been the bedrock of adoption under domestic law,<sup>171</sup> and more recently under International Law.<sup>172</sup> The underlying objective of parental consent is to safeguard the rights of birth parents. The ACA introduced new provisions for placement for adoption by parental consent<sup>173</sup> Section 52(5) defines legal consent as 'given unconditionally and with full understanding of what is involved; but a person may consent to adoption without knowing the identity of the persons in whose favour the order will be made. Where dispensing with consent to adoption is concerned the ACA departed from the reasonableness test under the 1976 Act and created a child welfare based ground for dispensing with parental consent.<sup>174</sup> Section 52(1) provides 'The court cannot dispense with the consent of any parent or guardian of a child to the child being placed for adoption unless the court is satisfied that the welfare of the child requires the consent to be dispensed with'.

At the Committee stage of the Adoption and Children Bill, Lord Howe stated that the proposed welfare test for dispensing with consent had 'caused considerable

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<sup>168</sup> para 8.

<sup>169</sup> *Re P (A Child)* [2008] EWCA Civ 535.

<sup>170</sup> para 138.

<sup>171</sup> Since the passing of the 1926 Adoption of Children Act.

<sup>172</sup> Parental consent to adoption is required under the ECHR, the European Convention on Adoption 1967 and the Hauge Convention 1993.

<sup>173</sup> ACA s19.

<sup>174</sup> ACA s52(1)(b).

disquiet among experienced professionals in adoption'.<sup>175</sup> His Lordship felt that the test for dispensing with consent would need to provide that adoption would, after considering all other options, be the only option available to the child 'in order to justify overriding parental consent'.<sup>176</sup> This carefully expressed amendment was designed 'to ensure proper weight was given to parental rights in respect of the child' and to ensure the threshold for dispensing with consent was clear. The government responded by confirming the test's suitability by the following factors: parental rights were protected by the term 'requires' in s 52(1)(b). 'Requires' meant that when dispensing with consent the courts must take into account all relevant welfare factors, including the child's mental, physical and emotional needs, this meant the test would not be satisfied in marginal cases. Parental protection was enhanced further by application of the welfare checklist in s.1(4)(f)(ii).<sup>177</sup> The Government also believed the provisions were compatible with the HRA 1998 by aligning the test with the grounds set out in *Johansen v Norway*,<sup>178</sup> in which the European Court of Human Rights (ECtHR) held,

'The deprivation of parental rights and access should only occur in exceptional circumstances justified only if motivated by an overriding requirement pertaining to the child's best interests'.<sup>179</sup>

Nevertheless, Lord Howe's concerns about the need for a clear threshold for dispensing with consent were shared by others. Professor of Law Shazia Choudhry argues that the welfare test used for dispensing with consent remains

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<sup>175</sup> Amendment no 76, Hansard, HL Deb, cols CWH260/1 & 263-269 (11 July 2002).

<sup>176</sup> *Ibid.*

<sup>177</sup> S1(4)(f)(ii) the ability and willingness of any of the child's relatives to provide the child with a secure environment in which the child can develop and otherwise to meet the child's needs.

<sup>178</sup> *Johansen v Norway* (1997) 23 EHRR 134.

<sup>179</sup> para 78.

as nebulous as the significant harm test in s31 of the CA 1989 which provides no actual legal definition and is therefore excessively broad.<sup>180</sup>

The judiciary have also expressed disquiet over the ease of which parental consent may be dispensed with. In *Re N*<sup>181</sup> Sir James Munby P observed that,

‘England is unusual in Europe in even permitting adoption without parental consent, indeed in the teeth of parental opposition, what I shall refer to as ‘non-consensual adoption’.<sup>182</sup>

Whilst extending the welfare test to dispense with parental consent ensures that adoption can be facilitated without delay, Bridge calls the statutory powers a ‘significant erosion of the natural parents standing in adoption proceedings’.<sup>183</sup>

## **1.6. THE ADOPTION AND CHILDREN ACT 2002: PROVISIONS DESIGNED TO PROTECT AND SUPPORT BIRTH FAMILIES**

The ACA places duties on local authorities to provide adoption support services which also extend to birth parents.<sup>184</sup> Broadly ACA s2(3) provides: each local authority must continue to maintain within their area a service designed to meet the needs, in relation to adoption, of children who may be adopted, their parents and guardians persons wishing to adopt a child, and adopted persons, their parents, natural parents and former guardians. Although it is not an issue the research intends to cover, it is significant that s77 creates a mechanism for birth relatives to request disclosure of information about their adult adopted child via

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<sup>180</sup> Choudhry, S., *The Adoption and Children Act 2002, The Welfare Principle and the Human Rights Act 1998- A Missed Opportunity?* *Child and Family Law Quarterly*, (2003 Vol 119) p. 120.

<sup>181</sup> *Re N* [2015] EWCA Civ 1112.

<sup>182</sup> para 7.

<sup>183</sup> Bridge (2003) p. 111

<sup>184</sup> These provisions are more prescriptive than those in the 1976 Act. Local authorities have to provide a range of adoption support services, and must, on request, undertake an assessment of needs for adoption support services for all adopted people, adopters and birth parents irrespective of the date of the adoption.

the ACA 'Adoption Contact Register'.<sup>185</sup> This means they may potentially seek contact if the adoptee has recorded that this is wanted after they turn 18.<sup>186</sup> Dey suggests this statutory generosity toward birth mothers was influenced by the changing attitudes toward closed adoption where,

'Diversity and change and the new idea that permanence within adoptive families was fictional given the high risks of separation and divorce. When the legal system creates parentage through the use of fiction it is incumbent not to block an individual's access to his identity'.<sup>187</sup>

Although birth parents lose all legal rights and responsibility towards their child, s46(6) places a duty on the court to 'consider' whether the child should have contact with any person including birth parents and should take into account existing and proposed arrangements. Although, it should be noted that judges have been reluctant to order contact between birth parents and an adoptee if adopters oppose it. According to Wall LJ,

'Whilst post adoption contact is more common, the jurisprudence is clear and that the 'imposition' on prospective adopters of orders for contact with which they are not in agreement is extremely unusual'.<sup>188</sup>

However this principle has afforded some flexibility where the House of Lords endorsed the idea of post adoption contact if it helps the child form his identity and dispel feelings of rejection, this confirmed by Lord Carswell in *Down Lisburn Health and Social Services Trust v H*.<sup>189</sup> There is a growing body of research on both the benefits and detriments of post adoption contact, primarily concerned

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<sup>185</sup> ACA s80.

<sup>186</sup> A birth relative can add their details to the register to try to find an adopted person by completing form CR part 2 'Application for a birth relative to apply for entry onto part 2 of the adoption contact register'. It is only possible to make contact with an adoptee who has added themselves to form CR part 1. The fee is £30.

<sup>187</sup> Dey (2005), p.302.

<sup>188</sup> *Re R (Adoption: Contact)* [2005] EWCA Civ 1128 para 49.

<sup>189</sup> *Down Lisburn Health and Social Services Trust v H* [2006] UKHL 36.

with the impact on children and their adoptive families.<sup>190</sup> Legal academic Brian Sloan argues that with the absolute removal of legal parenthood being such a central aspect of adoption policy 'post-adoption contact should be regarded as a means of mitigating the severity of adoption'.<sup>191</sup> Welstead suggests the provisions in s46(6) do protect parental interests because 'it recognises the geonics of family life-that for many children, maintaining contact with birth relatives may be vital to their development'.<sup>192</sup>

In s52 parental consent to placement must be 'given unconditionally and with understanding of what is involved' is before a child can be placed for adoption. However, s52(1)(b) allows the courts to dispense with parental consent if the welfare of the child requires it.<sup>193</sup> Guidance on the issue of dispensing with consent can be found in *Re P*<sup>194</sup> where Wall LJ held that the word 'requires' meant more than a simple application of the welfare test, 'requires' should convey a sense of imperative or necessary something in line with an enhanced welfare test.<sup>195</sup>

Subordinate legislation contains important provisions relatable to birth parents. This takes the form of the Adoption Agency Regulations 2005 (AAR), the Adoption Support Services Regulations 2005 (ASSR) and the Adoption National Minimum Standards 2014 (NMS). The Regulations, together with the NMS, form

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<sup>190</sup> This will be explored further in chapters five and six. See Mullender, A., (Ed), *Open Adoption, The Philosophy and Practice*, (1991, BAAF) and Lindley, B., 'Open Adoption-Is the Door Ajar?' (1997) *Child and Family Law Quarterly* 9 and McRoy, R, G, Grotevant, et al., *Openness in Adoption: new practices, new issues*, (1988).

<sup>191</sup> Sloan, B, 'Post-Adoption Contact Reform: Compounding the State-Ordered Termination of Parenthood?' (2014) 73 *The Cambridge Law Journal* 378 at p.134.

<sup>192</sup> Welstead, M, Edwards, S., *Family Law*, (2008) p. 250.

<sup>193</sup> Ibid. p.111, Between March 2007 and March 2008 the courts dispensed parental consent in 1,500 out of 3,200 adoptions.

<sup>194</sup> *Re P (A Child)* [2008] EWCA Civ 535.

<sup>195</sup> paras 124-125.

the basis of the regulatory framework under the Care Standards Act 2000 for the conduct of adoption agencies and adoption support agencies. The introductory list of values states that 'Children, birth parents/guardians and families and adoptive parents and families will be valued and respected'. The NMS are issued by the Secretary of State, and whilst they do not place legally enforceable obligations upon adoption agencies and local authorities; they are directive in that 'they can be used by children, birth parents and birth families, prospective/adoptive parents and adopted adults as a guide to what they should expect as a minimum the agency to provide and to do'. The NMS are also used by the registration authority Ofsted to determine whether agencies have met their minimum obligations.<sup>196</sup>

The Regulations and the NMS are significant to birth parents' rights and entitlements in adoption processes. Under regulation 14 of the AAR, notice must be given to birth parents about the intention to place children for adoption. Regulation 4 of the ASSR provides that birth parents should be kept up to date and informed about plans for the child to be adopted. AAR regulation 14(1)(c) provides that adoption agencies must 'ascertain the wishes and feelings of the parent or guardian of the child'. Regulation 17 concerns the requirement to prepare the child's permanence report which includes, at Regulation 17(d), 'the wishes and feelings of the child's parent or guardian'. There is also a requirement

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<sup>196</sup> Following inspection, OFSTED inspectors will make a number of judgements, including a judgement on the overall effectiveness of the service inspected. They will make recommendations for improvement, including any action required to ensure that provisions fully meet the NMS. For those provisions which are required to be registered with Ofsted, they will set requirements to be fulfilled in order to remedy any identified failure to meet the relevant regulations. Any identified failure in meeting the requirements of regulations may lead to consideration of enforcement action. Department for Education (July 2014).

under AAR Regulation 4 that birth parents must be offered counselling. Several of the NMS promote good practice by local authorities in respect of birth families. The opportunity for birth parents to make a 'life story book' is a requirement under Standard 2 of the NMS, this aiming to promote positive self-identity for the child and to help birth parents to remember that they will continue to be important to their child. Under Standard 12, birth parents should be kept informed on a regular basis about progress (or lack of) in their child's adoption. Standard 12.8 provides that the adoption agency must be active in its efforts to involve the birth family in the adoption planning. Standard 12.15 provides that the wishes and feelings of the birth parents will be listened to, valued and respected and if not followed, reasons will be given why. Standard 12 also requires that birth parents should be treated fairly, without prejudice, openly and with respect.

The statutory law provides the theoretical basis for the research. It then focuses on adoption practice from the perspectives of the research participants. An empirical approach has the objective of doing more than simply analysing and evaluating the law, because the law does not always communicate the complete picture, as Caroline Bridge explains,

'The majority of adoptions today are of older children from care. They have not been born to their adoptive parents but have a mother, parents of their own whom they may remember well and even have contact with. The social, as opposed to legal, reality bears no relation to the fiction created by the statutory words'.<sup>197</sup>

Because adoption is dealt with in civil proceedings the standard of proof is based upon a balance of probabilities. The courts will seek to do what is in the best interest of a child thus the strength of evidence or the level of proof needed to

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<sup>197</sup> Bridge, C., *Adoption Law: A Balance of Interests*, in Herring, J., *Family Law*, (2001), p.211.



permit adoption is a complex area based entirely on the welfare of the child which must be the paramount consideration.<sup>198</sup> In *B (A Child)*<sup>199</sup> Lord Neuberger gave guidance on the threshold for adoption,

‘A high degree of justification is needed under article 8 if a decision is to be made that a child should be adopted or placed in care with a view to adoption against the wishes of the child's parents. Domestic law runs broadly in parallel with article 8 in this context: the interests of the child must render it necessary to make an adoption order. A care order in a case such as this must be a last resort’.<sup>200</sup>

One of the key aims of the ACA was increase adoption as a solution to providing permanence for children in care,<sup>201</sup> or, as Sloan suggests, ‘to unashamedly bring about more adoptions, more quickly’.<sup>202</sup> It is of note that the UK has one of the world’s highest adoption from care rates.<sup>203</sup> Adoptions of children under five increased from 32 per cent in 1995 to 60 per cent in 2006. Between the 31 March 2005 and the 31 March 2016, 45,766 children have been adopted from care in England and Wales.<sup>204</sup>

Britain’s adoption law and practice are significantly different to other European States where there are fewer children in the care of the state and in-country adoptions are rare.<sup>205</sup> The UK has a system of child protection and adoption which resembles that of the USA, which as a Common Law country, operates under the

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<sup>198</sup> ACA s1.

<sup>199</sup> *B (A child) (Care Proceedings: Appeal)* [2013] UKSC 33.

<sup>200</sup> paras 74-78, 82, 130, 135, 198, 215.

<sup>201</sup> Harris-Short (2015), p.910.

<sup>202</sup> Sloan (2014), p.379.

<sup>203</sup> Tolson (2002), p.491.

<sup>204</sup> A National Voice, *Adoption Statistics* <https://goo.gl/wsvZPa> (Accessed 11 Dec 2017) Adoption UK, *Adoption Facts and Figures for England* (2017) <https://goo.gl/AYxJ74> (Accessed 11 Dec 2017). Gov.UK, *Children’s Social Care Statistics* (31 August 2017) <https://goo.gl/HFJBch> (Accessed 11 Dec 2017). Coram BAAF, *Adoption and Fostering Academy Looked after children, adoption and fostering statistics for England* (2017), <https://goo.gl/1wP46U> (Accessed 6 Sept 2017).

<sup>205</sup> For example, in Denmark adoption of children from care is almost unknown, resources are made available to support families to stay together. Bridge (2003), p.33.

adversarial legal system. Adoption in the USA is a legal process by which 'a person takes another person into the relation of child and thereby acquires the rights and incurs the responsibilities of parent in respect of such other person'.<sup>206</sup>

In the USA, apart from limited federal constitutional and statutory law, adoption is controlled by State law. Protection for families exists under the Due Process Clause of the Fourteenth Amendment to the US Constitution. The US Supreme Court has held that natural parents have a 'fundamental liberty interest in the care, custody, and management of their children'.<sup>207</sup> Accordingly, decisions in state proceedings to terminate parental rights must be based on clear and convincing evidence.<sup>208</sup> However, the Adoption and Safe Families Act 1997 requires that States move to terminate parental rights for children who have been in Foster Care for 15 months, and financial incentives are provided for States to improve adoption rates.<sup>209</sup> Around 135,000 children are adopted in the United States each year.<sup>210</sup>

Commentators have questioned the UK Government's policies on expanding out of family adoption. Bainham argues that although this approach is consistent with the USA's policy in the Adoption and Safe Families Act, it is inconsistent with the policies of other European States such as France, Sweden, Denmark and the Netherlands.<sup>211</sup> France and Sweden have strong commitment, backed up with resources, on the prevention of removing children into care and working to keep

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<sup>206</sup> N.Y. Dom. Rel. Law § 110 (McKinney 2010).

<sup>207</sup> *Santosky v. Kramer*, 455 U.S. 745, 753 (1982).

<sup>208</sup> Library of Congress, Adoption Law United States (2015) <https://goo.gl/CDjiNB> (Accessed 23 March 2018).

<sup>209</sup> Lewis (2004), p.235.

<sup>210</sup> Adoption Network, Law Centre *Adoption Statistics*, (2017) <https://adoptionnetwork.com/adoption-statistics> (Accessed 23 March 2017).

<sup>211</sup> Bainham, A, *Children the Modern Law*, (2005), p.306.

them with their families. Both countries avoid adoption due to the severing of birth families being against their principles of preserving birth ties.

Although France has full adoption, it also exercises a legal process called 'simple adoption' whereby a new child/parent relationship is created between the adopter and the adoptee. However, unlike full adoption, simple adoption does not sever the links between the adoptee and their birth family. It is accepted by all the parties that the adoptee has two families.<sup>212</sup> In the Netherlands, adoption figures are barely in existence. The only adoptions which occur are of orphan babies from the developing world. In Denmark, where adoption from State care is extremely rare, the social welfare system places financial priority on assisting impaired families to ensure they keep their children with them.<sup>213</sup> Equally, the policies of Australia and New Zealand contrast strongly to the UK. These jurisdictions place greater focus on the supporting of families to aid reunification, whilst utilising long-term fostering.<sup>214</sup> The concern that adoption had become more desirable than supporting parents to keep their children was expressed by Welstead and Edwards in 2008, who also noted that there was financial advantage to the state in having children adopted over paying long-term foster carers with the view to rehabilitating children with their birth families.<sup>215</sup> More recently, the UK government have been accused of using adoption as a money

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<sup>212</sup> Notaires de France, *Simple adoption* (Jan 2017) <https://www.notaires.fr/en/simple-adoption> (Accessed 23 March 2018).

<sup>213</sup> Bridge (2003) p.33

<sup>214</sup> Bainham, (2005), p306.

<sup>215</sup> Welstead (2008), p.279.

saving venture, with suggestions that local authorities are forced to meet adoption targets in favour of children's welfare.<sup>216</sup>

In 2016, a Department for Education impact assessment for the Children and Social Work Bill estimated that 310 million pounds could be saved by adopting a greater number of children from care<sup>217</sup> This proposal has been criticised as failing to acknowledge the limitations of trying to push for higher adoption rates. The Fostering Network argue,

'Regardless of government rhetoric, the vast majority of children who come into care will not, nor should be, placed for adoption. It must be recognised that in the drive to reduce the number of children in the care system that the largest single age group in care is those aged 10 years and above. It is highly unlikely that adoption would be assessed as the best permanence option for these children and young people'.<sup>218</sup>

This is critique reminiscent of the previously noted 40 per cent adoption targets placed on local authorities in 2004. Indeed, it was noted at the time by Nick Allen that adoption targets and deadlines placed on local authorities that detract from the overarching obligations to 'give dispassionate consideration to the needs of each child, would be an illegal policy'.<sup>219</sup>

## **1.7. ADOPTION AND INTERNATIONAL LAW**

As public bodies, local authorities and the courts must ensure their powers are exercised in accordance with the European Convention on Human Rights (ECHR). There is a substantial and authoritative body of jurisprudence from the ECtHR concerning children, their families and the state. The Convention rights of

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<sup>216</sup> Wright, O., Child welfare reforms: Government want children taken into care to be fast-tracked into permanent adoption, *The Independent*, (27 March 2016).

<sup>217</sup> Department for Education, Children and Social Work Bill: Impact assessments (May 2016), p.26.

<sup>218</sup> The Fostering Network, *Children and Social Work Bill* (2016) <https://goo.gl/YGaX6N> (Accessed 19 March 2018).

<sup>219</sup> Allen (2007), p.61.

families involved in public law now feature heavily in the domestic case law and commentary. The ECHR allows the individual to enforce the Convention rights against their signatory state in the International Court. The Convention rights which are most likely to be engaged in adoption law are Article 6: The right to a fair trial and Article 8 (1): Everyone has the right to respect for his private and family life, his home and his correspondence, along with Art 8 (2): There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society.

The duty of public bodies in adoption cases is to ensure actions are carried out in a child's best interest whilst not breaching the child's, the birth family's or indeed a potential adopter's right to family life under Art. 8. Article 8(2) provides that any interference with a right to family life must be legitimate, necessary and proportionate. In addition to the ECHR, the UK also has obligations towards children and families under the United Nations Convention on the Rights of the Child (UNCRC). The UNCRC was adopted by the General Assembly in November 1989. The UK signed the UNCRC on 19 April 1990, ratified it on 16 December 1991 and it came into force on 15 January 1992. Art 21 provides that 'If a child is adopted, the first concern must be what is best for the child'. The paramountcy principle entrenched in s1 ACA therefore places adoption law parallel with Art 21. Art 7 provides that 'Every Child, as far as possible, has the right to be cared for by their parents' and Article 9 provides that 'Children must not be separated from their parents unless it is in the best interests of the child'. The international recognition of rights was added to by the domestic law in the

form of the Human Rights Act 1998 (HRA). These sources of law have been described as ‘a fresh beginning for children’s law’.<sup>220</sup>

The ECHR was incorporated into domestic law by the HRA. Now, when domestic law is enacted by Parliament, it must give effect to Convention rights. When laws are interpreted by the domestic courts they must consider European Convention case law by virtue of the HRA, but they are not bound by it. The Margin of Appreciation (MoA) is a doctrine which allows a state a certain level of discretion when aligning domestic law with the Convention rights. The MoA was defined by the Strasbourg court in *Handyside v UK*,<sup>221</sup>

‘By reason of their direct and continuous contact with the vital forces of their countries, state authorities are in principle in a better position than the international judge to give an opinion on the exact content of those requirements as well as the ‘necessity’ of a ‘restriction’ or ‘penalty’ intended to meet them.....it is for the national authorities to make the initial assessment of the reality of the pressing social need implied by the notion of ‘necessity’ in this context. Consequently (this) leaves the contracting state a margin of appreciation’.<sup>222</sup>

Although this principle permits the State some considerable flexibility, which has been later demonstrated through the case law, in *Handyside* the court made it clear that the MoA was not infinite,

‘This does not give the contracting state an unlimited power of appreciation. The Court, which, with the Commission, is responsible for ensuring the observance of those states’ engagements, is empowered to give the final ruling on whether a ‘restriction’ or a ‘penalty’ is reconcilable. The domestic margin of appreciation thus goes hand in hand with a European supervision’.<sup>223</sup>

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<sup>220</sup> Bainham (2005), p. 29.

<sup>221</sup> *Handyside v UK* (1976) Series A No 24, 1 EHRR 737.

<sup>222</sup> para 48.

<sup>223</sup> para 50. See also *Johansen v Norway* (App No 17383/98) ECHR (1997) para 84 where the ECtHR held that the state had overstepped the MoA by unjustly depriving the mother of access and parental rights to her child.

Proportionality is a principle which underpins the Articles which affect public child law. Where the term 'necessity' arises in an action by the State this should go hand in hand with proportionality. 'Any interference with a right must correspond to a pressing social need and be proportionate to the legitimate aim pursued by the State. It requires a reasonable relationship between the means employed and the aim sought to be realised, proportionality means fair balance'.<sup>224</sup> In *YC v United Kingdom*<sup>225</sup> the ECtHR expounded on the requirement of overall proportionality, stating,

'The identification of the child's best interests and the assessment of the overall proportionality of any given measure will require courts to weigh a number of factors in the balance. The Court has not previously set out an exhaustive list of such factors, which may vary depending on the circumstances of the case in question.'<sup>226</sup>

Where the issue in question is adoption the court observed,

'It is clear from the foregoing that family ties may only be severed in very exceptional circumstances and that everything must be done to preserve personal relationships...it is not enough to show that a child could be placed in a more beneficial environment for his upbringing'.<sup>227</sup>

For the State legitimately to interfere with a Convention right it must justify its action on the basis that: the interference is in accordance with the law, it serves a legitimate aim and is necessary in a democratic society. This has been established further by case law as 'the notion of necessity implies that the interference corresponds to a pressing social need'.<sup>228</sup> Any actions must also refrain from being discriminatory. Guidance on discrimination was provided by the ECtHR in *McMichael v UK*<sup>229</sup> as,

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<sup>224</sup> Bridge (2003), p.154.

<sup>225</sup> *YC v UK* (App No 4547/10 ECHR) (2012).

<sup>226</sup> para 135.

<sup>227</sup> para 134.

<sup>228</sup> *Johansen v Norway* (1996) 23 EHRR 33 para.56.

<sup>229</sup> *McMichael v United Kingdom* (1995) Series A, No 308, 20 EHRR 205.

‘A difference in treatment is discriminatory if it has no reasonable and objective justification, that is, if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised’.<sup>230</sup>

Article 8’s significance in family law is characterised by Harris-Short as ‘simply reinforcing the importance of preserving the integrity of the family unit which has long formed a core principle of the child protection policy’.<sup>231</sup> An adoption order represents the complete severance of ties between a child and his parents. This equates a major interference in family life by a public authority and thus it must be defensible under Art 8. Bainham believes that the complete severance of the parent child relationship that adoption provides should not occur without careful consideration of parents’ interests as well as the child’s.<sup>232</sup> This is not a requirement under the ACA, which places weight only on the child’s welfare. Bainham therefore questions the compatibility of the ACA with the ECHR.<sup>233</sup> The ECtHR have consistently emphasised that a fair balance must be struck between a child staying in care, being adopted or being reunited with their natural parent. In *Hokkanen v Finland*<sup>234</sup> the court held,

‘The State is under a positive obligation to take all reasonable steps as are necessary to facilitate reunion between the parent and the child. It must be questioned whether, if the State proceeds straight to adoption without first attempting to help a family under the auspices of a care order, has it taken all the reasonable steps to reconcile the parent with the child’.<sup>235</sup>

The child’s best interests may require long term or permanent separation from his family, but the ECtHR has maintained through case law that openness, procedural fairness, including timeliness, must be achieved in cases where the

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<sup>230</sup> para 4.

<sup>231</sup> Harris-Short, S, Miles, et al., *Family Law: Text Cases and Materials*, (2015), p.905.

<sup>232</sup> Bainham (2005), pp.266-267.

<sup>233</sup> Ibid.

<sup>234</sup> *Hokkanen v Finland* (App No 19823/92 [1996] 1 FLR 289.

<sup>235</sup> para 81.



plan for a child is adoption. A state's failure to keep a mother informed of a child's placement with adopters whilst deliberately protracting court proceedings may constitute a breach of a parent's Art. 6 rights, as was held in *H v UK*<sup>236</sup> where,

'The Court considers it right to place special emphasis on the importance of what was at stake for the mother in the proceedings. Not only were they decisive for her future relations with her own child, but they had a particular quality of irreversibility, involving as they did what the High Court graphically described as the 'statutory guillotine' of adoption. In cases such as this the authorities are under a duty to exercise exceptional diligence because there is always a danger that any procedural delay will result in the de facto determination of the of the issue submitted to the court before it has held its' hearing'.<sup>237</sup>

Premeditated delay was also a factor in *W v UK*<sup>238</sup> where the actions of the state included the exclusion of parents in decision making, attempted extinguishment of parental responsibility and the use of delay in proceedings to deny access rights. The European Court held that these actions constituted breaches of Arts. 6 and 8, stating that,

'The parents must be involved in the decision making process to a degree sufficient to provide them with the requisite protection of their interests. The view of the parents must be taken into account, they must be allowed to take advantage of any remedies available to them. In particular, delay must not be allowed to decide the outcome of the proceedings. It is not possible to extinguish parental rights entirely; the applicant should have been able to access the court as there was clearly a dispute in this case'.<sup>239</sup>

The ECtHR made it clear that local authorities must only take action to interfere in family relationships when it is fully justified under Art 8 (2), and families must be protected from arbitrary intrusion because, as the court stated, 'decisions such as this are often irreversible'.<sup>240</sup>

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<sup>236</sup> *H v UK* Application No. 9580/81 (1988) 10 EHRR 95.

<sup>237</sup> para 85.

<sup>238</sup> *W v UK* (1988) App no 9749/82.

<sup>239</sup> *Ibid.* para 62.

<sup>240</sup> *Ibid.*

Failure to include parents in the decision making process has been found to breach the Convention. In *McMichael v UK*<sup>241</sup> the child was freed for adoption following the domestic court dispensing with parental consent, which was held to have been unreasonably withheld.<sup>242</sup> The parents were found to have been unjustly excluded from the decision making process by the withholding of documents and lack of disclosure of evidence; there was no 'necessity' in this conduct. This in turn meant not only a violation of Art 8 but also of Art 6, because the right to a fair hearing could not have been achieved without disclosure of vital evidence. The European Court held that 'whilst Art 8 contains no explicit procedural requirements, the decision making process leading to measures of interference must be fair and as such afford due respect to the interests safeguarded by Art 8'.<sup>243</sup>

The ECtHR have stressed the significance of the right to reciprocated enjoyment between a child and his natural parents. In *Johansen v Norway*<sup>244</sup> the Norwegian court facilitated a child's confidential adoption and placed a complete bar on contact between the child and her mother. The court highlighted that,

'The mutual enjoyment by parent and child of each other's company constitutes a fundamental element of family life and domestic measures hindering such enjoyment amount to an interference with the right protected by art. 8'.<sup>245</sup>

It was held that,

'The applicant had been deprived of her parental rights and access. These measures were particularly far reaching in that they totally deprived the applicant of her family life with the child and were inconsistent with the aim of reuniting them. Such measures should only be applied in exceptional

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<sup>241</sup> *McMichael v United Kingdom* (1995) Series A, No 308, 20 EHRR 205

<sup>242</sup> Under the AA 1976.

<sup>243</sup> *McMichael v UK* at para 87.

<sup>244</sup> *Johansen v Norway* (1996) 23 EHRR 33.

<sup>245</sup> para 52.

circumstances and could only be justified if they were motivated by an overriding requirement pertaining to the child's best interests'.<sup>246</sup>

In *Haase v Germany*<sup>247</sup> the ECtHR reaffirmed the weight attached to Art 8 where family life is concerned. The applicant mother and father had their parental responsibility removed and were barred from having any contact with their five children. The court held unanimously that there had been a violation of Art 8. The factors which related to Art 8 were set out by the court,

'An interference with the right to respect for family life entails a violation of Art. 8 unless it is "in accordance with the law", has an aim that is legitimate under Art. 8(2) and is necessary in a democratic society" for the aforesaid aims. Essentially, Art. 8 is to protect the individual against arbitrary action by the public authorities, there may be additional positive obligations inherent in an effective 'respect' for family life. Thus, where the existence of a family tie has been established, the State must act in a manner that will enable the parent and child to be reunited.'<sup>248</sup>

Where the question of determining whether the actions were 'necessary in a democratic society' the court said,

'We have to consider whether, in the light of the case as a whole, the reasons adduced to justify this measure were relevant and sufficient for the purposes of para. 2 of Art. 8. The notion of necessity implies that the interference corresponds to a pressing social need and in particular, that it is proportionate to the legitimate aim being perused'.<sup>249</sup>

Where the MoA was concerned the court in *Haase* made it clear that whilst the State afforded a wide MoA to allow it to take a range of actions to protect children, especially in an emergency, a careful assessment of the impact of this action on the child and family must take place. This exercise must include consideration of alternatives to the removal of the child from his home. If, after this assessment, the authority felt there was no option but to act to protect the child, the duty to the

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<sup>246</sup> para 78.

<sup>247</sup> *Haase v Germany* (App no11057/02) (2005) 40 EHRR 19.

<sup>248</sup> para 80.

<sup>249</sup> para 83.

family as a whole did not end at that point.<sup>250</sup> In *K and T v Finland*<sup>251</sup> the court held that when a child is in the care of the state,

‘A stricter scrutiny is called for in respect of any further limitations, such as restrictions placed by the authorities on parental rights of access, and of any legal safeguards designed to secure an effective protection of the right of parents and children to respect for their family life. Such further limitations entail the danger that the family relations between the parents and a young child are effectively curtailed’.<sup>252</sup>

*Johansen* and *Haase* are illustrative of the jurisprudence from Strasbourg which places weight on the absolute value of parent/child relationships coupled with a heavy burden on authorities if they intend to interfere with family life. However, each case before the court has depended on its individual facts. In *Söderbäck v Sweden*<sup>253</sup> the court distinguished *Johansen*. An adoption order was held not to be a breach of art. 8 where the applicant father had never lived with the child and had barely had any contact with her. According to Herring, *Söderbäck* resulted in the European Court holding ‘a more positive attitude towards adoption’<sup>254</sup>

The rights of parents versus the rights of the child have been argued as presenting the European Court with dilemmas which it has attempted to resolve by declaring that the child’s rights will override that of parents where there is conflict between the two.<sup>255</sup> In *Yousef v Netherlands*<sup>256</sup> the court observed that ‘in judicial decisions where the rights under Article 8 of parents and those of a child are at stake, the child’s rights must be the paramount consideration. If any

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<sup>250</sup> paras 92-93.

<sup>251</sup> *K and T v Finland* [2001] 2 FLR 707.

<sup>252</sup> para 154.

<sup>253</sup> *Söderbäck v Sweden* [1999] 1 FLR 250.

<sup>254</sup> Herring (2015), p.694.

<sup>255</sup> English, R., The Adoption Dilemma: the rights of parents’ v child’s interests, *UK Human Rights Blog*, (2 June 2011) <https://goo.gl/nNoiF5> (Accessed 17 March 2018).

<sup>256</sup> *Yousef v Netherlands* [2003] 1 FLR 210.

balancing of interests is necessary, the interests of the child must prevail’;<sup>257</sup> And, in *YC v UK*,<sup>258</sup> the court ‘reiterates that in cases concerning the placing of a child for adoption, which entails the permanent severance of family ties, the best interests of the child are paramount’.<sup>259</sup>

In *R and H v UK*<sup>260</sup> the parents, relying on Art 8, complained about procedural aspects of their child’s adoption and the state’s obligation to respect their right to family life. The ECtHR held that the state had not exceeded its’ MoA in placing the child for adoption, stating,

‘Whilst strict scrutiny is called for in a state’s decision to take a child into care and impose further restrictions on parents’ rights, Art 8 does not require that domestic authorities make endless attempts at family reunification; it only requires that they take all the necessary steps that can reasonably be demanded to facilitate the reunion of the child and his or her parents’.<sup>261</sup>

The principle of ‘child centred human rights’<sup>262</sup> was also evident in *Neulinger and Shuruk v Switzerland*<sup>263</sup> where the Court declared that ‘there is currently a broad consensus, including in international law, in support of the idea that in all decisions concerning children, their best interests must be paramount’.<sup>264</sup> This principle has been reinforced in *Strand Lobben and Others v Norway*.<sup>265</sup> Here the ECtHR placed emphasis on paramountcy of the child’s welfare before the interests of the parent, which in this case concerned cutting all *de facto* and legal ties with the birth mother,

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<sup>257</sup> para 73.

<sup>258</sup> *YC v United Kingdom* (2012) 55 EHRR 33.

<sup>259</sup> para 134.

<sup>260</sup> *R and H v UK* 35348/06 [2011] ECHR 844.

<sup>261</sup> para 81. See also *Elsholz v. Germany* no. 25735/94 [2000] ECHR 371.

<sup>262</sup> *McEwan-Strand* (2018).

<sup>263</sup> *Neulinger and Shuruk v Switzerland* 41615/07, [2010] ECHR 1053.

<sup>264</sup> para 135.

<sup>265</sup> *Strand Lobben and Others v Norway* (2017) (Application no. 37283/13).

‘The court has repeatedly held that severing such ties cuts a child off from its roots, which is a measure which can be justified only in exceptional circumstances. Regarding the preservation of such roots, it has in other circumstances held that domestic authorities could legitimately deprive a minor, against the latter’s will, of his filiation with the person who he has a strong emotional bond’.<sup>266</sup>

Rosalind English believes that such child focused jurisprudence has developed from dissents concerning child law and the actions of the state breaching the human rights of parents. She argues that where the best interests of the child conflict with the parents’ rights ‘time is of the essence in these decisions and too much deference to the parties’ conflicting interests under Art. 8 should not be allowed to prejudice what is, in the end, an arrangement determining the destiny of the child’.<sup>267</sup>

Harris-Short notes that previously in cases concerning adoption such as *Johansen* birth parents possessed ‘independent rights’<sup>268</sup> which were judiciously assessed against the rights and interests of the child. However, where paramountcy or ‘child centred rights’ are concerned, there is no balancing of interests, birth parents’ rights are only relevant ‘insofar as they bear upon the interests of the child’.<sup>269</sup> Nevertheless, where compulsory adoption is concerned, protection for parents is still evident under the authority of such cases as *Olsson v Sweden*<sup>270</sup> and *K and T v Finland*<sup>271</sup> where there remains the necessity for relevant and sufficient reasons to justify state intervention into families.<sup>272</sup>

## 1.8. THE DOMESTIC COURTS AND THE ECHR

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<sup>266</sup> para 4.

<sup>267</sup> English (2011).

<sup>268</sup> Harris-Short (2015), p.919.

<sup>269</sup> Ibid.

<sup>270</sup> *Olsson v Sweden* App no 10465/83 [1988] ECHR 2.

<sup>271</sup> *K and T v Finland* [2001] 2 FLR 707.

<sup>272</sup> Bridge (2003), p.163.

The domestic courts have consistently acknowledged the severe impact of adoption on family life. Harris Short notes that the courts have generally embraced the Strasbourg jurisprudence which necessitates that adoption ‘must be imperative or demanded rather than merely optional or desirable’.<sup>273</sup> In *Down Lisburn Health and Social Services Trust*<sup>274</sup> Lady Hale described adoption as ‘the most draconian interference with family life possible. In *Re P*,<sup>275</sup> a case concerning the welfare of a child ‘requiring’ adoption, Wall LJ stated,

‘We think we should add a few words about the Strasbourg jurisprudence. Plainly Art 8 is engaged; and it is elementary that, if Art 8 is not to be breached, any intervention and any placement order made without parental consent must be proportionate to the legitimate aim of protecting the interests of the child. Cogent justification must exist if parental consent to adoption is to be dispensed with’.<sup>276</sup>

In *B (A Child)*<sup>277</sup> Lord Wilson observed the ECtHR jurisprudence, affirming that ‘a high degree of justification is needed under article 8 if a decision is to be made that a child should be adopted against the wishes of the child's parents’;<sup>278</sup> whilst Lord Neuberger observed the additional demands of the Rule of Law,

‘What the rule of law in a modern democratic society would require is that no child should be adopted without a judge deciding after a proper hearing, with the interests of the parents and of the child being appropriately advanced, that it is necessary in the interests of the child that she is adopted’.<sup>279</sup>

The gravity of the adoption order combined with the weight of responsibility on authorities in adoption proceedings was perhaps best explained by Munby J in *County Council v C*,<sup>280</sup>

‘The fairness which articles 6 and 8 guarantee to every parent, and also of course, to every child’ in public law proceedings imposes a heavy burden

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<sup>273</sup> Harris-Short (2015), p.921.

<sup>274</sup> *Down Lisburn Health and Social Services Trust v H* [2006] UKHL 36 para 34.

<sup>275</sup> *Re P (A Child)* [2008] EWCA Civ 535.

<sup>276</sup> paras 119-124.

<sup>277</sup> *B (A child)* (Care Proceedings: Appeal) [2013] UKSC 33.

<sup>278</sup> para 34.

<sup>279</sup> para 82.

<sup>280</sup> *County Council v C* [2002] EWHC 1379 (Fam), at para 150.

on local authorities. But it must never be forgotten that, with the State's abandonment of the right to impose capital sentences, orders of the kind which judges of this division are typically invited to make in public law proceedings are amongst the most drastic that any judge in any jurisdiction is ever empowered to make. It is a terrible thing to say to any parent, particularly, perhaps, to a mother, that she is to lose her child forever'.<sup>281</sup>

Writing extra judicially, Sir Munby reiterates the crucial nature of human rights instruments, in particular where human dignity is concerned. In addition to the preamble of the ECHR which declares that 'All human beings are born free and equal in dignity and rights, they are endowed with reason and conscience' Sir Munby observes the additional protection afforded under the Charter of Fundamental Rights of the European Union, proclaimed at Nice in December 2000. Article 1 provides 'Human dignity is inviolable. It must be respected and protected'.<sup>282</sup> Whilst acknowledging that 'human dignity' does not appear as a phrase in the Convention, Sir Munby stresses the underlying importance it has in International and domestic law,

'Human dignity is immanent in Art 8, indeed in almost every one of the Convention's provisions. The recognition and protection of human dignity is one of the core values, in truth surely the core value of our society which has embraced the principle of the Convention. It is, I should like to think also a core value of the common law'.<sup>283</sup>

Sir Munby emphasises that the human rights instruments place positive obligations upon the state to secure essential human dignity, empathy and concern which becomes all the more important for people 'whose freedom of action and choice is curtailed by law, we must use the Convention to promote

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<sup>281</sup> para 150.

<sup>282</sup> The Charter is not at present legally binding in our domestic law and is therefore not a source of law in the strict sense. But it can properly be consulted insofar as it proclaims, reaffirms or elucidates the content of those human rights that are generally recognised throughout the European family of nations.

<sup>283</sup> Mr Justice Munby, Human Rights and Social Welfare Law: The Impact of Article 8, p.4

<https://www.scie.org.uk/news/events/previousevents/humanrights06/mrjusticemunby.pdf> (Accessed on 13 July 2018).



respect for the inherent dignity, especially for those who are most vulnerable to having that dignity ignored'.<sup>284</sup>

It will be seen in chapter six that the judiciary continue to be proactive in ensuring adoption practice adheres strictly to requirements of the Convention and local authorities have faced harsh criticism by judges where adoption may have been promoted based on weak evidence and inadequate consideration of parents' and children's Convention rights.<sup>285</sup>

## **1.9. CONCLUSION**

This chapter has examined the evolution of adoption from a rudimentary social provision intended to provide homes for orphans, to a highly complex statutory process involving the state, the court and families, under the auspices of public child law. The reform of adoption law has been pertinent to social changes such as the stigma attached to unmarried mothers, illegitimacy and children in the care of the state needing permanent families. Adoption has been used as a solution to all of these issues. From Allen's analysis of law reform, it can be seen as highly politically driven and through the process of official Inquiries, reporting and debate, it is arguable that sometimes the impact of adoption on children and families was lost sight of. The ACA has governed adoption law since 2005, yet successive governments have continued to promote policies designed to speed up and increase adoption for looked after children; something that concerns many experts, who stress that the UK already has one of the world's highest adoption statistic, coupled with a weak investment in helping troubled families stay

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<sup>284</sup> Ibid. p.6.

<sup>285</sup> Notably in *B (A Child) (Care Proceedings: Appeal)* [2013] UKSC and *Re B-S (Children) (Adoption: Leave to Oppose)* [2013] EWCA Civ 1146.

together. The ECtHR has been purposive in providing a valuable body of legal authority where adoption and the Convention Rights are concerned. The jurisprudence demands that the state does not lose sight of absolute need for proportionality, necessity and a fair balance when decisions concerns adoption. The UK family courts have in turn maintained a strong human rights discourse which is evident in the judiciary's continual reminders that adoption is the most severe order a judge can make and should only be considered when it is clear that nothing else will do.

## **CHAPTER TWO: A REVIEW OF THE LITERATURE**

### **2.0. INTRODUCTION**

This chapter begins with exploration of the meaning of ‘family’, the universal influence of marriage in society and how women as ‘mothers’ have existed within these institutions. It then examines the legal, social and political concepts of both adoption and birth mothers by the critical analysis of literature from a range of disciplines including law, social work, psychology and sociology. The academic discourse is contrasted with autobiographical narrative by those personally affected by adoption. The chapter goes on to provide the theoretical basis for the qualitative aspect of the thesis with analysis of previous empirical research into the lives of birth mothers from the 1950s to the present day, to establish what is already known and understood about them. Previous studies have focused on birth mothers’ relinquishment of children for adoption rather than compulsory adoption actioned by the state; but more recent research finds similarities between historical<sup>1</sup> and modern<sup>2</sup> birth mothers. Much of the previous research concerns the emotional impact of adoption on birth mothers. This chapter therefore identifies a gap in the research where little appreciation exists of birth mother’s experiences of the legal process of adoption. The literature often describes women whose children are adopted as ‘birth mothers’. The term birth mother is used throughout the thesis. It is used here not to stereotype women but to provide the identification of the study’s participants.

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<sup>1</sup> Historical birth mothers are those who ‘relinquished’ their babies because of social stigma and moral judgment from the 1920s to the 1970s.

<sup>2</sup> Modern birth mothers are those whose children are adopted following their removal by the state due to welfare concerns and are adopted by statutory means either with or without consent from the time that adoption became a child welfare issue during the 1980s.

## 2.1. FAMILIES, MARRIAGE AND MOTHERS

The 'family' holds three key functions within society: to provide for the rearing of children, to give a sense of identity and belonging amongst its members and to transfer culture between generations.<sup>3</sup> It is evident that the removal of a child from his birth family and the adoption of the child by strangers will have a life-long impact on each of these functions for the child his birth and adoptive family. Western society tends to consider 'normal family' as a 'nuclear family' this being a father and mother and children living together.<sup>4</sup> In some societies several generations and branches of extended family live closely together. However, in modern Western society it is common for young family members to meet a partner and relocate to an area some distance away from their family.<sup>5</sup>

Martha Fineman defines the nuclear family as 'the sexual family', a union with heterosexual, formally celebrated union at its core'.<sup>6</sup> She believes this intimate connection not only represents the 'natural' family form for the social and cultural unit but it also ensures this family unit is protected and granted 'privacy or immunity from substantial state supervision'.<sup>7</sup> If this is the starting point with which to understand the essence of the traditional family ideal we can begin to appreciate the far reaching and long term impact of compulsory adoption on families. Adoption not only severs a child from his biological family, first there is the termination of the right to privacy, which then forces the family concerned to surrender to the control of the state.

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<sup>3</sup> Fulcher, J., Scott, J., *Sociology*, (2011), p.430.

<sup>4</sup> Alternative families now exist widely, for example: single-parent households, cohabitating, unmarried couples, gay and lesbian couples and single adults.

<sup>5</sup> Ibid. p.431.

<sup>6</sup> Albertson Fineman, M., *The Neutered Mother: The Sexual Family and Twentieth Century Tragedies*, (1995), p.143.

<sup>7</sup> Ibid. p.143.

Child rearing is considered to be the primary purpose of the family. Along with providing a child with a sense of identity they learn the values of the small family group and beyond that the norms of the wider society they live within. Children learning about their cultural heritages ensures that this culture survives future generations.<sup>8</sup> Fineman points out that whilst ‘a great deal of emotionally charged rhetoric in family law is directed at children, the primary focus is still on maintaining the traditional heterosexual family model’.<sup>9</sup>

Marriage has historically been recognised as ‘the foundation of family life’ and ‘the very basis of society itself’.<sup>10</sup> ‘Monogamy’, marriage between a man and a woman is the traditional ideal and divorce was not routinely used to end a marriage until as late as the 1950s due to the shame and stigma attached to its use.<sup>11</sup> Legal, heterosexual marriage still plays the dominant role in the ideological family form. Fineman considers that the domination of marriage as the ideal is all the more evident where divorce heralds the end of a relationship leading to a ‘broken family’. Further, she argues that the unwed mother-child unit is still considered to pose a threat to the ideal of the family.<sup>12</sup> The presence of shame in the lives of lone mothers has endured over history, but Pat Thane notes that shame was at its most intense during the 1950s when ‘the apogee of ‘family Britain’ headed by two married parents was dominant’.<sup>13</sup> Thane observed that

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<sup>8</sup> Fulcher and Scott (2011), pp. 431-432.

<sup>9</sup> Ibid. p.147.

<sup>10</sup> Ibid. p.146.

<sup>11</sup> Parliament UK, Divorce since 1900,

<https://www.parliament.uk/business/publications/research/olympic-britain/housing-and-home-life/split-pairs/> (Accessed 8 July 2018).

<sup>12</sup> Ibid. p.145.

<sup>13</sup> Thane (2012), p.1.

most unmarried mothers eventually married, not necessarily the father of their 'illegitimate child', to avoid being 'life-long outcasts'.<sup>14</sup>

'Mother' is a universally possessed symbol'<sup>15</sup> Every human being has been born of a mother and many women are also mothers. Women within the family context may exist as wives, mothers and daughters, with the presence of children creating more than one layer of dependency. The first layer being that the children are dependent on the mother, but equally the primary carer (usually the mother) often becomes dependent on those social institutions such as health and accommodation to provide the necessary care for the children.<sup>16</sup> Fineman argues that along with the intensely personal contexts of mother, they hold both social and political dimensions where they are placed in the context of other socially defined roles depending on the culture they exist within.<sup>17</sup>

Modern birth mothers will have experienced the breakdown of their family by way of child protection interventions leading to the permanent or at least long-term separation from their children. They lose the right to raise their children within their own family group. It is known that birth mothers themselves commonly grow up in dysfunctional families where multiple needs are present. Domestic violence, substance dependency and mental illness leading to child abuse and neglect together with deprivation may have caused them to spend time in care during their own childhoods. These intergenerational problems mean that often birth mothers as children have not experienced the 'nuclear family' or the supposed

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<sup>14</sup> Ibid. p.2.

<sup>15</sup> Ibid. p.71.

<sup>16</sup> Ibid. p.26.

<sup>17</sup> Albertson Fineman, M, Karpin, I (Eds)., *Mothers in Law: Feminist Theory and the Legal Regulation of Motherhood*, (1995), p.x.

stability that marriage is meant to promote. Often, they themselves have never married and may be dependent on men who themselves have multiple problems.<sup>18</sup> They may not be 'broken' by divorce but rather they are fractured by abusive relationships and the enforced loss of children. These women then find little or no support within their communities because of the stigma of adoption. Finally, as 'mothers', that all important universal symbol, they have been deemed ineligible by adoption. In law they have failed as mothers.

## 2.2. CONCEPTS OF ADOPTION

The theory of adoption is found in law,<sup>19</sup> social work,<sup>20</sup> psychology,<sup>21</sup> sociology<sup>22</sup> and in autobiographical work by authors who have personal experience of adoption.<sup>23</sup> A review of literature found that sources which concern adoption tend to fall into four categories.<sup>24</sup> These are: historical interpretations of the development of adoption law and practice,<sup>25</sup> academic law and social policy accounts of adoption<sup>26</sup>, quantitative and qualitative research publications, and

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<sup>18</sup> See Proudman (2012) for a helpful discussion on intergenerational family problems.

<sup>19</sup> For an excellent, inclusive account of adoption law see Bridge C, Swindells, H., *Adoption: The Modern Law*, (2003).

<sup>20</sup> See Neil, B., Supporting the birth relatives of adopted children: a review of the relevant literature, *University of East Anglia* (2004).

<sup>21</sup> See Brodzinsky, D. M., Schechter, M. D. (Eds.) *The psychology of adoption*, (1990).

<sup>22</sup> See Weegar, K 'Adoption, Family Ideology, and Social Stigma: Bias in Community Attitudes, Adoption Research, and Practice' (2000) 49:4 *Interdisciplinary Journal of Applied Family Studies* pp.363-369.

<sup>23</sup> See Angel, A., Angel, A., (Eds), *Silent Embrace: Perspective on Birth and Adoption*, (2010).

<sup>24</sup> These are by no means exhaustive categories.

<sup>25</sup> Lewis, J., 'Adoption: The Nature of Policy Shifts in England and Wales', (2004) 18 *International Journal of Law, Policy and the Family* 235, and Lowe, N, V., *English Adoption Law: Past, present and Future*, in Katz, et al., *Cross Currents: Family Law and Policy in the US and England*, (2000), Chapter 14.

<sup>26</sup> Critical analysis of the law can be found in, Hoggett, B., *Adoption Law: an overview*, in Bean, P., *Adoption: Essays in Social Policy, law and Sociology*, (1984) and in Bridge (2003).

personal narratives written by birth mothers themselves, or by those who work closely with them.

Over the last two decades there has also been a permeation of adoption related material in the media.<sup>27</sup> This is because adoption is controversial, it concerns vulnerable children and it represents an extreme interference in family life. Each time governments promote new adoption policy, primarily in the form of 'saving children in care rhetoric'<sup>28</sup> it is ignited by the media and thus increases public interest.<sup>29</sup> In the last two decades adoption has become ubiquitous as a talking point, but, as Barbara Prynne noted in 2000, it has not always been so openly enunciated,

'Adoption is now an issue about which everyone has an opinion. Whilst many people's lives have been touched by adoption, only recently has it been discussed openly. A reason for such secrecy is that adoption represents something unacceptable: the giving or taking away of children and placing them with strangers. This practice is unheard of in some cultures, where it is shocking that, on the one hand, parents might damage a child, and on the other, that no one in the extended family would take the child in'.<sup>30</sup>

Prynne's observation that 'everyone has an opinion' is evident in the large quantity of non-academic publications which have created an industry out of adoption.<sup>31</sup> Some seek to educate and inform parties involved in adoption, whilst others are little more than the author's view on adoption. In her book 'Bubble Wrapped Children', Helen Oakwater fosters strong views on the use of adoption. Her

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<sup>27</sup> For example, adoption agencies often have press offices which provide adoption related information and interviews to the media. See Adoption UK Press and the Media (2017) <https://www.adoptionuk.org/news/press-media> (Accessed 22 March 2018).

<sup>28</sup> Harris-Short (2015), p.910.

<sup>29</sup> For example, in 2014 the popular press reported on 'Adoption Week' with reports into all aspects of adoption policy and law. See Peach, D., Adoption Week: What it means to be an Adopted Child in 21<sup>st</sup> Century Britain, *The Independent* (7 November 2014).

<sup>30</sup> Prynne, B., in Treacher and Katz (Eds), *The Dynamics of Adoption*, (2000), p.67.

<sup>31</sup> See Davis, J., *Preparing for Adoption* (2014). Palmer, I., *What to expect when You're Adopting*, (2009). Lord J., *Adopting a Child*, (2016).



stance is evocative of Government policy on the aim of adoption.<sup>32</sup> It also corresponds with more general media propagation,

‘Adoption occurs because the state intervened and removed maltreated children from his toxic parents. These parents did not ‘give up’ their child, he was forcibly removed because their parenting style was abusive, neglectful or deeply inadequate’.<sup>33</sup>

This observation conveys a one-dimensional perspective on adoption. It also stereotypes and generalises birth parents. This in turn sends out latent messages to society that parents who lose their children to adoption do not deserve to be helped and supported; as Proudman notes ‘birth parents are undoubtedly demonized’.<sup>34</sup>

Analysis of adoption literature reveals a concept that has multifarious meanings depending upon the perspective in question. Objective accounts are apt to outline the practical consequences of adoption. According to Keating it is ‘the process of transferring a child from its natural parents, on a permanent basis, to another person who then takes on the rights and responsibilities formerly held by the natural parent’.<sup>35</sup> O’Halloran defines adoption as ‘a (legal) method of creating between the child and one who is not the natural parent of the child an artificial

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<sup>32</sup> For example, former government advisor on adoption Sir Martin Narey said ‘my belief is that there is a very strong case for radically increasing the number of adoptions. There is an unjustified optimism about the capacity of parents to improve, the current system is gripped by an unrealistic option about the capacity of deeply inadequate parents to change’. Narey, M., *The Narey Report: A Blueprint for the Nation’s Lost Children*, *The Times*, (5 July 2011).

<sup>33</sup> Oakwater, H., *Bubble Wrapped Children*, (2012), p.8.

<sup>34</sup> Proudman (2012), p.988.

<sup>35</sup> Keating, J., *A Child for Keeps, The History of Adoption in England 1914-1945*, (2009), p.2.

family relationship analogous to that of parent and child'.<sup>36</sup> Benet unequivocally describes the social rather than the legal reality of adoption,

‘The emphasis on the nuclear family means that the ties between parents and children are closer and more intense than ever. Therefore, to the modern parent losing a child to adoption deprives her of one of her only human contacts. Thus, the only children who are adopted are those whose parents are really unable to keep them, either because of the opprobrium attached to unmarried motherhood, or because of poverty, extreme youth and other practical handicaps’.<sup>37</sup>

These definitions seek to convey the omnipotence of adoption law, which physically separates a child from his parent(s), it then denies the biological relationship between them ever existed. The law constructs a legal relationship between child and adopters, which is, in theory, irreversible. *Prima facie* this is a straightforward process. Yet Howe sees adoption as containing features that are inherently ‘problematic as a way of organizing human relationships, adoption is an inflexible instrument defined partly in law and partly by policies and regulations followed by local authorities’.<sup>38</sup> Some authors define adoption less dispassionately by looking behind its factual benefits. Sally Greenwood believes adoption is driven by deep-rooted social prejudices ‘adoption protocols have resonated with society’s racial and class biases, containing the assumption that the adopted child is ‘moving up’ and is benefitting socially from adoption’.<sup>39</sup> Women’s Rights activist Joss Shawyer<sup>40</sup> condemns historical adoption which

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<sup>36</sup> Excerpt from the report of the Tomlin Committee (Cmd 2401 1925) cited in O’Halloran, K., *The Politics of Adoption: International Perspectives on Law, Policy and Practice*, (2009), p.8.

<sup>37</sup> Benet, M, K., *The Character of Adoption*, (1976), p.15.

<sup>38</sup> Howe (1992), p.99.

<sup>39</sup> Greenwood, S., *Pregnant Bodies and Rational Parenthood*, in Treacher (2000), p.169.

<sup>40</sup> Activist and single mother Joss Shawyer campaigned for the rights of single mothers from the 1970s. She founded The Council for the Single Mother and Her Child in 1973 and was a foundation member of Jigsaw (established in 1976), which helped women find children who had been adopted. She has argued that social policies, practices and adoption law forced women to give up their babies.

engineered the forced adoption of many thousands of babies, not only under the stigma of illegitimacy but to blackmail young women into marriage and submissiveness. Shawyer points out that adoption at that time was not remotely connected to children's welfare,

'Adoption is a violent act, a political act of aggression towards women for not keeping her sexuality for trading purposes through traditional marriage. The penalty for this is severe. She is stripped of her child by a variety of subtle and not so subtle manoeuvres and then brutally abandoned. How many are set free? How many birth mothers remain trapped inside an emotional nightmare with unresolved death as a lonely companion?'<sup>41</sup>

Janette Logan reviewed Shawyer's analysis and suggested that by the 1990s, her definition represented an 'extreme and outdated view'.<sup>42</sup> Although, as Logan's own work on adoption acknowledges, even by the 1990s there had been little concern expressed about the effect separation from their children had upon birth mothers; indeed it is argued that inadequate consideration was also given to the effect on the children concerned who, it is argued by Carol Sanger, often experience and articulate separation from their mothers as abandonment.<sup>43</sup> The philosophy behind adoption was one of 'they (birth mothers) should have put it all behind them and moved on with no lasting emotional scars'.<sup>44</sup> Feminist legal theorists such as Dowd believe that adoption has serious consequences beyond the basic understanding of child welfare decisions; she argues that adoption creates long-term, inter-generational 'devaluing of motherhood and nurturance'.<sup>45</sup> Similarly, Howe suggests adoption is something of a contradiction in terms where 'we have the curious position in which adoption practices value biological birth

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<sup>41</sup> Shawyer, J., *Death by Adoption*, (1979), p.45.

<sup>42</sup> Logan (1996) p.609.

<sup>43</sup> Sanger, C in Albertson Fineman, M., *Mothers in Law* (1995), p.28.

<sup>44</sup> Ibid.

<sup>45</sup> Dowd, N., *A Feminist Analysis of Adoption* in, Weisberg, D., (Ed) *Applications of Feminist Legal Theory to Women's Lives*, (1996), p.1149.

and parenting so much that they seek to be as much like them as possible, while at the same time such practices endeavour to exclude the biological mother from the child's upbringing'.<sup>46</sup>

Tom Frame argues that adoption is a social experiment which has gone far enough,

'Why does the Government continue to promote a policy that is against the very fabric of life? Adoption is unnatural and is not always the best alternative arrangement for children in distress and definitely no service to their mothers'.<sup>47</sup>

He continues,

'Adoption is like a sinking ship, the more holes you plug, the more holes appear. It is useless to keep making new adoption laws on the foundations of old ones which are rotten. Maybe it is time to say this social experiment has failed and implement procedures that really do address fundamental issues. Put in place systems of support that will not allow the bond between a mother and her child to be broken'.<sup>48</sup>

But, as the previous chapter demonstrated, adoption is entrenched in the UK legal system, supported by a strong ideology of children's welfare being best served by permanence. Frame's argument, although compelling, is unlikely to influence policy makers any time soon. As such adoption will continue to construct new legal families, dissolve biological families and create new generations of birth mothers.

### **2.3. CONCEPTS OF BIRTH MOTHERS**

A significant challenge with a legal study of birth mothers and adoption is the fact that literature on adoption law tends not to involve them in any great depth. Official guidance and legal analyses highlight that 'adoption is a service for

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<sup>46</sup> Howe (1992), p.21.

<sup>47</sup> Frame, T., *Children on Demand: The Ethics of Defying Nature*, (2008), p.92.

<sup>48</sup> Ibid.

children who cannot return to their birth families'.<sup>49</sup> A determining line is then firmly drawn and birth mothers are forgotten. Adoption is about children, and even more so since the ACA incorporated children's welfare as paramount in all decisions made about them. But it is argued that this leads to a reductionist view of the impact of adoption on birth mothers. They have not disappeared. They still exist, and they are expected to continue with their lives with little or no support, such is the current practice that local authority recourses are invested in adoptive placements.<sup>50</sup>

The so called 'adoption triangle' has at each point a child, adopters and birth parents.<sup>51</sup> Birth mothers' position in the triangle is temporary because adoption relationships concern children and their adopters. Adoption as a legal phenomenon does not include birth mothers beyond the need for consent. Adoption heralds the official end of their relationship with their children. Although legally birth mothers' involvement in their children's lives terminates when an adoption order is made, their experiences of the separation and the adoption process may mean they are unable to disassociate themselves from their children emotionally or psychologically. These are deep-rooted issues that are too often overlooked or denied by the professionals who have been involved in the adoption.<sup>52</sup> In law the focus is placed entirely upon the child's welfare. For this reason, it is challenging to unpick birth mothers' experiences from much of the

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<sup>49</sup> *Adoption A New Approach*, (December 2000), *An Action Plan for Adoption: Tackling Delay*, (2011).

<sup>50</sup> Syal, R., 'Councils get £30m fund to speed up adoption searches', *The Guardian* (5 July 2015).

<sup>51</sup> See Triseliotis, J, Feast, J., et al., *The Adoption Triangle Revisited*, (2005), BAAF.

<sup>52</sup> Memarnia et al (2014) found that birth mothers' emotional reactions to losing their children were treated as insignificant by professionals.

theory of adoption because children and their adoptive families become the centre of interest and activity.

The literature search revealed that birth mothers are rarely studied beyond their very minor role in the adoption story. This was emphasised by Rushton in his 2003 review of adoption research where he observes that,

‘Research attention has not been equally distributed. The bulk of the work has been based on adoptive parents’ views and their accounts of their children, with research on birth parents’ experience lagging far behind. One possible reason for this is the reluctance of birth parents to consent to involvement in research on an especially painful topic: the loss of their children to adoption. It may also be the case that social services are reluctant to expose the level of need for support services for this group,<sup>53</sup>

This view supported by Howe et al, who found that ‘in spite of their numbers, birth mothers’ experiences remain personal and private, their stories untold. As a group they have failed to gain an identity; as individuals they have escaped notice’.<sup>54</sup> Professor Beth Neil has completed research into the impact of adoption on birth families within the social work discipline,<sup>55</sup> but overall, little attention is paid to birth mothers, particularly since the research on unmarried mothers relinquishing their babies reached a point of saturation. Therefore, a large population of women who experience a life changing event at the hands of the law remain invisible.

## **2.4. (UN)REASONABLE MOTHERS**

During the mid 1970s the spotlight was shone upon the concept of permanence for children. This was translated into a general policy that ‘all children in care were

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<sup>53</sup> Rushton (2003), p.35.

<sup>54</sup> Howe (1992) p.104.

<sup>55</sup> Neil, B., *Supporting the birth relatives of adopted children: a review of the relevant literature*, University of East Anglia, (2004).

adoptable'.<sup>56</sup> Permanence meant that solutions such as long term-fostering which would not legally sever a child from his birth family fell out of favour. Jane Lewis notes how permanency by adoption eventually morphed into an ideal solution to social service departments facing major expenditure cutbacks.<sup>57</sup> There was little in the way of empirical research, but enough psychoanalytical theory to establish that children needed 'family care but not necessarily from their birth family'.<sup>58</sup> This meant that the importance of work with birth families to aid reunification could be deferred in favour of adoption. Lewis considers the detriment of this growing policy to socially excluded birth families 'adoption as a cheaper option was disturbing given that the vast majority of children in care came from poor families'.<sup>59</sup> Referring to the crucial requirement of legal consent to such adoptions she considers that birth mothers in particular were defenceless under the Adoption Act 1976 provision of 'reasonableness'.<sup>60</sup> Section 16 provided that 'his<sup>61</sup> agreement to the making of the adoption order should be dispensed with on a ground specified in subsection 16(2)(b) is withholding his agreement unreasonably'.<sup>62</sup> Lewis notes 'birth mothers had to prove in court that they were not withholding their consent to adoption 'unreasonably'. Conversely mothers

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<sup>56</sup> Lewis (2004), p.237

<sup>57</sup> Ibid.

<sup>58</sup> Ibid.

<sup>59</sup> Ibid.

<sup>60</sup> Ibid. p.241.

<sup>61</sup> Note the generic use of 'his' when primarily it was the primarily mothers consent which was dispensed with.

<sup>62</sup> The test for dispensing with parental consent under the Act was one of the courts having to decide whether the birth parents were withholding their consent unreasonably. The 1954 Department Committee on Adoption stated that this power for dispensing with consent originated in 1949 legislation to focus the attention of the courts on the child's welfare.

who refused to consent could be held to lack the insight that would make them reasonable.<sup>63</sup>

The court's earlier position on this objective test was laid down in *Re W*<sup>64</sup> and *O'Connor v A and B*.<sup>65</sup> In these cases the court took a child centred approach and found that a reasonable mother would acknowledge the importance of her child's interests, which were of prime importance.<sup>66</sup> The test was simply that the court had the task of deciding whether a 'reasonable mother' would place the welfare of her child above her own and accept that the child would be better off adopted, if she did not then she was 'unreasonable' for the purposes of the 1976 Act.<sup>67</sup> Elizabeth Cooke argues that the test was illogical because 'how can a parent be unreasonable in refusing to part with their child?'<sup>68</sup> The difficulties of tests for 'reasonable parents' in adoption proceedings were highlighted again in *Down Lisburn v H*<sup>69</sup> where the House of Lords had to decide if parents who were waiting to hear whether post adoption contact would be possible, were holding their consent to their child's adoption unreasonably. In dismissing the parents' appeal Lord Carswell stated that when determining whether to dispense with a parent's agreement to adoption the court had to apply an objective standard of reasonableness, looking at the circumstances of the actual parent, but supposing

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<sup>63</sup> Lewis (2004), p.242.

<sup>64</sup> *Re W (An Infant)* [1971] A.C. 682.

<sup>65</sup> *O'Connor v A and B* [1971] 1 W.L.R 1227 from these cases it was held that 'whether a reasonable parent, judged at the date of the hearing, could have come to the same conclusion as the parent in the case.

<sup>66</sup> Bridge (2003), p.16.

<sup>67</sup> Ibid.

<sup>68</sup> Cooke, E., 'Dispensing with Consent to Adoption-A Choice of Welfare Tests', *Child and Family Law Quarterly*, (1997,9,3), p.261.

<sup>69</sup> *Down Lisburn Health and Social Services Trust v H* [2006] UKHL 36.



this person to be endowed with a mind and temperament capable of making reasonable decisions.<sup>70</sup>

Later, with the commission of the White Paper which would eventually lead to the Children Act 1989, criticisms of the, 'unreasonable withholding of consent' provision were articulated,

'The pressure of circumstances such as inadequate housing, other children to care for, mental or physical illness, leads to the child's reception into care. Time passes, rehabilitation becomes increasingly unlikely and short-term foster placements are allowed to 'turn into' adoption placements as attachments develop between child and carers. Yet by the time of the adoption hearing there will still have been nothing in the birth mother's behaviour to merit dispensing with agreement on any ground save 'unreasonably withholding agreement'.<sup>71</sup>

In discussing the adoption process, Journalist and Human Rights Activist Polly Toynbee points out the inherent disadvantages birth mothers experience in the family courts,

'There is a wide diversity in the practice of taking children into care. Mothers lose all rights to their children. Delays in court proceedings mean that once a wrong decision has been made, perhaps in a report by a social worker who may not have known the family for long, it can take months for a mother to get her case heard. By then the court may decide the child is settled and should not be removed. The mother may have had no access in that time and in these situations an adoption order is thought best for the child, to avoid disruptions, and the mother is cut out altogether'.<sup>72</sup>

Lewis notes that since the 1976 Act was passed, adoption debates rarely include the matter of birth mothers,<sup>73</sup> who were likely to be written off as lost causes early on in discussions. Pat Thane observes that single mothers continued to be blamed for societies problems as recently as the 1990s when the government

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<sup>70</sup> para 70.

<sup>71</sup> Lewis (2004), p.243

<sup>72</sup> Toynbee, P., *Lost Children: the story of adopted children searching for their mothers*, (1985), p.238.

<sup>73</sup> Lewis (2004), p.246.

suggested that one-parent families 'subsidize illegitimacy and immorality'.<sup>74</sup> In 1999, the then Home Secretary Jack Straw suggested, when noting the fall in adoption rates, that young single women should be encouraged to 'give up' their unwanted babies to adoption and that this was a 'positive reasonable choice'.<sup>75</sup> Straw was criticised by agencies who supported pregnant women. They asserted that few women handed babies over for adoption because of the emotional difficulties that they faced in doing this.<sup>76</sup> Straw's ideology was shared by some academics. In 2001, Moody argued that general practitioners ought to be more proactive in recommending adoption to undecided women. After all she noted that 'adoption has changed from the draconian images of babies being forcibly removed from mothers in the 1950s'.<sup>77</sup> Ian Dey disagrees with Moody's assertion, he asks 'what has changed? The process is no longer secret, you may have some contact, but adoption is not voluntary, and any objections can be overridden by the courts'.<sup>78</sup>

## **2.5. THE PRESENCE OF STIGMA AND DECEPTION**

It has been established that recent research rarely focusses on birth mothers. This leads to the question of whether there is a parallel between modern and historical birth mothers, who Shawyer argues were not worthy of attention because they were stigmatised and perceived to have offended morals of the times.<sup>79</sup> Douglas and Philpot suggest that historical birth mothers were

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<sup>74</sup> Thane (2012), p.170.

<sup>75</sup> BBC News, UK Politics, *Straw Adamant on Adoption*, (26 Jan 1999) <https://goo.gl/h2L5PB>, (Accessed 17 Dec 2017).

<sup>76</sup> Ibid.

<sup>77</sup> Moody, R., 'Baby Adoption', (2001) 322 *British Medical Journal* 556 at p.557 <https://goo.gl/up84uc> (Accessed 17 Dec 2017).

<sup>78</sup> Dey (2005), p.289.

<sup>79</sup> Shawyer (1979), p.70.

considered to be 'outside of control' and similarly modern birth mothers, particularly young ones, are seen as 'stupid, feckless and irresponsible'.<sup>80</sup> Stigma was defined by Goffman as 'the situation of the individual who is disqualified from full social acceptance' and 'an attribute that is deeply discrediting, something unusual or bad about the moral status of the person'.<sup>81</sup> It is conceivable that birth mothers still endure stigmatising, only now the stigma has shifted from unmarried pregnant women<sup>82</sup> to mothers whose children are removed from them and adopted through the family courts. Stigma may be constructed by the attitudes that society holds towards them, or it may be something birth mothers have internalised as self-created castigation which causes them to believe they are worthless. It is argued that the generalising of birth mothers is common and leads to an accepted stereotype of a 'typical birth mother' as defined by Oakwater,

'Despite birth father being a drunk and irritated by the kid's, birth mum likes having a strong man around. She enjoys partying with him and friends at home or in pubs and clubs. She doesn't remember much about the night the police and social services took the kids away, alcohol and the red mist of anger make the event impossible for her to recall'.<sup>83</sup>

It is such typecasting that creates stigma, the way in which society views and treats women who lose children to adoption. This in turn leads to social exclusion and feelings of shame and worthlessness. There is a lack of literature which considers whether the social stigma that was attributed to birth mothers in previous times still exists today limiting the quality of life of women who have been unable to parent their children to an acceptable legal and social standard.

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<sup>80</sup> Douglas, A, Philpot, T., (Eds), *Adoption: Changing Families Changing Times*, (2003), p.80.

<sup>81</sup> Goffman, E., *Stigma: Notes on the Management of Spoiled Identity*, (1963), pp.9-13.

<sup>82</sup> For a helpful summary of historical adoption and unmarried mothers see Lord Wilson, The Denning Society Lecture, Lincoln's Inn, *Adoption: Complexities Beyond the Law*, (13 November 2014) <https://goo.gl/iAs5XZ> (Accessed 17 Dec 2017).

<sup>83</sup> Oakwater (2012), p.22.

Toynbee argues that along with stigmatizing, birth mothers also experience, 'unconscious deception'<sup>84</sup> about their future role in their child's life post adoption. She believes that no matter how birth mothers may be led to believe they will maintain a link with their child, the priority is placed on adopters being encouraged not to reject the child, even if this means the cutting of all ties with the birth mother. She asks 'if adoption is supposed to be open why does the birth mother have to be cut out of the child's life absolutely? The natural mother is seen as such a threat, that on an adoption order being made, she disappears forever'.<sup>85</sup>

Many examples of similar treatment are found in autobiographical narratives. These stories reflect the reality of birth mothers' experiences. Personal accounts of adoption can be found in the work of Thane and Evans,<sup>86</sup> Powell, Inglis,<sup>87</sup> Tofield,<sup>88</sup> Shawyer<sup>89</sup> and Elliot.<sup>90</sup> *The Easy Way Out*,<sup>91</sup> written in 1997 by Sue Powell, a birth mother herself, sought to give expression to birth mothers through the empathic position of the author. Powell writes for birth mothers because, as she says 'for decades we have remained an unseen and silent minority, crushed by shame, guilt and denial. A reason for our silence is fear of the hostility which

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<sup>84</sup> Toynbee (1985), p.223.

<sup>85</sup> Ibid.

<sup>86</sup> Thane, (2012) Pat Thane and Tanya Evans present excellent biographical accounts of the lives of unmarried mothers during the 21<sup>st</sup> century.

<sup>87</sup> Inglis, K., *Living Mistakes: Mothers who Consented to Adoption*, (1994).

<sup>88</sup> Tofield, S., *The Unmarried Mother*, (2013).

<sup>89</sup> Shawyer (1979), A social worker and birth mother, Shawyer's account of the treatment of unmarried mothers in New Zealand is a powerful critique of the 'brainwashing' and the 'destruction' of millions of families by the removal and adoption of babies over several decades which was considered to be acceptable policy and practice.

<sup>90</sup> Elliot (2006), Sue Elliot, an adoptee herself, provides a personal narrative of her reunion with her birth mothers whilst examining the progress of adoption law and practice from Victorian England until modern times and the effect adoptions had upon birth mothers.

<sup>91</sup> Powell, S, Warren, J., *The Easy Way Out?* (1997).

we have come to expect'.<sup>92</sup> Elliot, an adoptee who searched for her birth mother, was also critical of historical adoption practice, asking 'how could anyone think it was the right thing to do to separate the best part of a million babies from their mothers and keep on doing it until the supply ran out in the 1970's? At best it seemed a gross piece of social engineering'.<sup>93</sup> Toynbee is equally disapproving of adoption ideology,

'[Adoption] sounds as if it ought to be easy and humane, but human emotions rarely fit into such tidy compartments, especially where they deal with some of the most fundamental feelings about identity. Natural parents and their children seek in each other some clue to their own being. The bond is not severed by the signing of an adoption paper'.<sup>94</sup>

## **2.6. INFLUENTIAL RESEARCH ON BIRTH MOTHERS**

Existing knowledge on birth mothers is best acquired from previous empirical studies. Most of the studies on birth mothers concern the emotional impact of relinquishment or of compulsory adoption, with little legal research available on birth mothers. However, research has been carried out in the social work, sociology and psychology disciplines. These studies are relevant to the current research because they concern statutory adoption, so there is a relatable overlap into law. This literature provided a foundation for which to develop the approach of the current study in both a legal and a social context.

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<sup>92</sup> Ibid. p.16.

<sup>93</sup> Elliot (2006), p.59. Elliot discovered that her own birth mother had been consigned to a mental hospital under the Mental Deficiency Act 1913 with the diagnosis of 'defective' because she was an unmarried mother. For a helpful discussion on women being compulsorily incarcerated in institutions for moralistic purposes see Thane (2012), pp. 24-25.

<sup>94</sup> Toynbee, (1985), p.15.

For many years, women who were parted with their children by adoption were largely ignored by academic research. The 1970s began to see the emergence of qualitative research and the publication of studies concerning birth mothers who had relinquished their babies from the 1920s to the 1970s. As the stigma of illegitimacy diminished, there was a great deal of interest in all aspects of adoption. Researchers investigated the effect of baby adoption on unmarried birth mothers. Although the act of relinquishment of a child for adoption and the adoption of a child from care who has been removed from home by a local authority are conceptually different, later research found comparisons in how birth mothers experienced the adoption of their child. In particular, their sense of loss, their perspectives on adoption practice and how society behaved toward them because of stigmatisation.

The early, experimental studies concerned unmarried mothers who had experienced pregnancy, birth and relinquishment within a dogmatic and patriarchal society which viewed sex outside of marriage and illegitimacy as moral crimes. Case histories found that lone mothers belonged to all classes, types and age groups. Some were teenagers from 'broken homes', others were estranged women whose husbands were away during the wars who found comfort with other men, many were in long terms relationships but wished not to marry.<sup>95</sup> For many of these women, adoption was considered to be in the best interests of the mother and her child. Gradually though, this comfortable belief began to be challenged by research which presented evidence that adoption practice was often inherently harmful to birth mothers. The notion that women could simply

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<sup>95</sup> Thane (2012), p.57.

give up their children and forget about them was no longer authoritative. Rarely was adoption easy or straightforward, as Amal Treacher explains,

‘Adoption is an emotive subject entangled in webs of confusion and until recently was seen, unproblematically, as providing solutions for all those involved. This simplistic view of adoption led to a denial of its difficulties and complexities. The belief that adoption will repair and make good the losses and absences of the situation is no longer feasible or realistic’.<sup>96</sup>

The early research findings no longer hold shock value, because there are no illusions about the traumatic effects of adoption on birth mothers, but at the time they were published, these findings were revelations which dared to dispute decades of secrecy and denial of the intrinsic injustice of adoption practice.

In 1984, Winkler and Van Keppel carried out a national, retrospective, cross-sectional study of 213 Australian women who relinquished a child for adoption. They acknowledged that during the 1970s the number of women relinquishing their child for adoption had fallen rapidly<sup>97</sup> but they estimated that from 1968 to 1980 approximately 35,000 children were adopted. The research focuses on birth mothers’ adjustment to relinquishment. Despite the general view that adoption was an autonomous choice, only 30 per cent of the respondents reported that they felt they had made the right decision in giving up their child. Thane observes that many of the organisations<sup>98</sup> which supported women and unmarried mothers

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<sup>96</sup> Treacher (2000), p.11.

<sup>97</sup> Winkler, R., Van Keppel, M (1984). This Australian study influenced researchers in Scotland and the UK to carry out similar studies. The decline in adoptions was due to availability of contraception, abortion and changes in the social attitude toward unmarried mothers, this replicates the reasons for adoption falling in the UK during the 1970s.

<sup>98</sup> One such organisation being the National Council for the Unmarried Mother and her Child (NC) established in 1918 it was instrumental in supporting women and campaigning for their rights and equality. The NC eventually became what is now known as ‘Gingerbread’, for over a century the organisation has helped women keep and raise their children. See Gingerbread Our History

were disturbed by the pressure being put on new mothers by health professionals to give up their babies for adoption.<sup>99</sup> This pressure along with the stigma and adverse treatment left birth mothers powerless to fight against 'the conspiracy of silence'<sup>100</sup> which existed around the practice of adoption. The particulars of the adoptions were kept secret from birth mothers. This was permissible under the Adoption of Children Act 1965.<sup>101</sup> As with the UK, the Australian law allowed adoption records to be closed, with the mother's details removed from the child's birth certificate and replaced with the details of the adopters. Such drastic measures created habitual reactions in participants. They experienced painful inner conflict coupled with the burden of responsibility and guilt at giving up their child. As time progressed, this inner conflict often transformed into anger and resentment directed toward those who had 'pressured' them to relinquish.<sup>102</sup>

Winkler and Van Keppel discovered that birth mothers continued with their lives as though their adopted child had died. They compared this to perinatal death, with a grieving process which is grounded in the actual loss of a child. The authors argued that for relinquishing mothers, their grief is not resolvable, because their child has not died, there is no closure unless they meet their child again. The child's continued existence is said to create 'a confused grieving process'.<sup>103</sup> This is advanced by Shawyer, who argues that not only was relinquishment analogous

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<https://www.gingerbread.org.uk/what-we-do/about-gingerbread/our-history/> (Accessed on 9 July 2018).

<sup>99</sup> Thane (2012), p.98.

<sup>100</sup> O'Halloran., (2009), p.286, as noted by O'Halloran, Australian adoption legislation, like the UK's, was a response to the social circumstances of unmarried mothers.

<sup>101</sup> The Adoption of Children Act 1965 provided that adoption orders held no details of the birth mother and birth certificates were altered to remove any birth parent information.

<sup>102</sup> Van Keppel (1984), p. 9.

<sup>103</sup> Howe (1992), p.3.



to a child's death, but a birth mother compounded additional 'death by adoption' herself,<sup>104</sup> in other words she suffered a psychological death which was life-long and devastating. Winkler and Van Keppel's respondents suffered from shock and experienced periods of severe depression. Some attempted suicide. A number were receiving psychiatric care many years after the separation and recognised that this was directly connected to the loss of their child.<sup>105</sup>

Relinquishment, for so long dismissed as unimportant to the adoption process, was affirmed as being a 'stressful life event'.<sup>106</sup> It had a profoundly negative impact on women's physical and mental health. Along with the relinquishment, these problems were seen to be as a result of birth mothers being actively prevented from expressing their feelings. The study found that inconsolable pain and grief, was lessened by the receiving of information about her child.<sup>107</sup> 'Adjustment', meaning a women's ability to adjust to the loss of her child to adoption and continue to make progress in her life, was dependent on not only information about her child, but also on social support and expression of feelings. Having some knowledge of her child's wellbeing, Winkler and Van Keppel insisted, was a vital component to address the 'strong and persistent sense of loss'.<sup>108</sup> The authors strongly opposed the practice of closed adoption due to its major impact upon a birth mother's health, they argue that,

'There needs to be changes to the adoption legislation which will allow alternatives to the current system of closed adoption, open adoption is a practice whereby adoptive and relinquishing parents will meet the adopters and later exchange information about the child'.<sup>109</sup>

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<sup>104</sup> Shawyer (1979), p.70.

<sup>105</sup> Van Keppel (1984), p.41.

<sup>106</sup> Ibid. pp.20-21.

<sup>107</sup> Ibid. p.53.

<sup>108</sup> Ibid.

<sup>109</sup> Ibid. pp.72-73.

The importance of post-adoption contact is a factor which has been reinforced through subsequent studies and remains an important issue in today's adoption practice.<sup>110</sup>

Drawing on the knowledge from Winkler and Van Keppel's research, Bouchier, Lambert and Triseliotis studied the personal and social circumstances, attitudes and current adjustment of Scottish birth mothers.<sup>111</sup> The study found that most of birth mothers had themselves experienced 'insecure childhoods'.<sup>112</sup> This included poor relationships between parents, parental alcoholism, early bereavement, a lack of maternal love, poverty, social deprivation, domestic violence and child abuse.<sup>113</sup> This 'model' of birth mother remains relatively illustrative of women whose children are removed into care and placed for adoption. Proudman estimates that over 45 per cent of women whose children are adopted from care suffer from mental health problems and 60 percent were themselves abused as children.<sup>114</sup>

Bouchier et al. emphasise the powerlessness experienced by birth mothers to exercise any autonomy in the decision making process,

'Over half of the mothers insisted that adoption was completely contrary to their wishes and those who reported that adoption was their choice, albeit

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<sup>110</sup> For both birth families and for adopted children, see Sloan, B (2014) pp. 378-404

<sup>111</sup> Bouchier, P., Lambert, L, et al (1992), p.11. This study is carried out under a social work discipline and concerns mothers who parted with a child during the 1960s and early 1970s.

<sup>112</sup> Thane (2012), p.127 also notes that many unmarried mothers during the 1960s came from broken or unhappy homes with many families being dependent on state benefits.

<sup>113</sup> Ibid. p. 25.

<sup>114</sup> Proudman (2012), pp.987-988.

reluctantly, stated that adoption had been presented to them as the only option open to them, no other alternative was discussed'.<sup>115</sup>

Most of the birth mothers in the research had experienced adoption under the procedures of the Adoption Act 1958,<sup>116</sup> and 83 per cent confirmed that they had signed consent to adoption as was the legal requirement. The remaining mothers could either not recall signing consent or had not consented. The accounts given on the matter of their consent revealed it was rarely informed or given freely.<sup>117</sup> Those who expressed satisfaction about the way their cases were handled referred to adoption workers' openness, honesty and genuine attempts to discuss the implications of adoption. Those who were unhappy used words such as 'biased' or 'powerful' in the context of professionals who insisted that adoption was the decisive factor, there was no possibility that they could keep their child.<sup>118</sup>

Bouchier's birth mothers felt they were rejected at the moment of relinquishment and prevented from 'saying a proper goodbye' to their child.<sup>119</sup> This rejection was reinforced by the failure of adoption workers to uphold their wish for a tangible link in some form of update on their child's progress. Those few who maintained such a link spoke positively of this and drew comfort from knowing their child was happy and safe. Those who were not kept updated harboured fears that their child would never know how loved they were or worse that their child would be unaware they were adopted.<sup>120</sup>

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<sup>115</sup> Bouchier (1992), p.25.

<sup>116</sup> The remaining 15 per cent of the participants had been subject to the Adoption Act 1976.

<sup>117</sup> Bouchier (1992), pp.45-47.

<sup>118</sup> Ibid. pp.48-49.

<sup>119</sup> Ibid.

<sup>120</sup> Ibid. pp.52-53.

Bouchier discovered that for many birth mothers, the re-emergence of grief occurred at significant times through her life; most notably the child's birthday and the anniversary of the separation. This acute grief, which is responsive to such stimulus as dates, constitutes a special type of anxiety, which the authors identified as directly related to separation of a mother and child. This manifested as sadness and pining which is often accompanied by the 'emotional component of the urge to search'.<sup>121</sup> Such reactions to the loss of a living child to adoption have been compared to women's grief responses to perinatal death.<sup>122</sup> Bowlby identified searching/pining for a deceased loved one as stage two of the grieving process.<sup>123</sup> Yet with the loss of a child to adoption, women's communities and the wider society does not allow for a grief process such as offering sympathy, condolences or a ceremony. With adoption there is no physical or psychological ending. As Oakwater notes 'the birth mother is catapulted into bereavement and loss; the grieving process starts but may never end, emotionally she will be shocked and disturbed. She may appear angry and uncooperative, dissociated, in denial and frozen'.<sup>124</sup>

Bouchier's study was carried out after adoption Act 1958 had been passed<sup>125</sup> which for the first time allowed adopted people to access their original birth

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<sup>121</sup> Ibid. pp.60-62. See also Triseliotis, J., *Open Adoption, in* Mullender, A., (Ed), *Open Adoption, The Philosophy and Practice*, (1991), BAAF, p.19.

<sup>122</sup> Logan (1996), p.609.

<sup>123</sup> Society; *The Individual and Medicine, Adjustment, Grief and Grieving*, (21 August 2014), <https://goo.gl/NMeybV> (Accessed 4 Sept 2017).

<sup>124</sup> Oakwater (2012), p.67.

<sup>125</sup> The Adoption Act 1958 updated and consolidated the law relating to adoption. After receiving Royal Assent on 18 December 1958, it came into force on 1 April 1959, regulating requirements for adopters, requirements for adoption agencies and the procedure to be used when making or appealing a court decision on adoption. After the

records. The study focused on women who had expressed interest in having contact with their adopted child, but 72 per cent had no understanding of the legal process required to seek such contact.<sup>126</sup> The majority of birth mothers who had approached adoption agencies or social work departments to enquire about the adopted child were told they had no rights to ask or to be told anything about the child's circumstances.<sup>127</sup> However, the strict impassability of adoption had begun to attract criticism because of the serious negative influence on the mental health of birth mothers. Logan found that mental illness was also far more prevalent in women who had experienced closed adoption than those who were kept informed about their child's placement.<sup>128</sup>

Bouchier's recommendations for considerate practice were retrospective rather than based on future practice, because by the 1990s, few women relinquished their babies. However, the ideals remain applicable to modern practice. Notably the provision of counselling for birth mothers before and after adoption.<sup>129</sup> A need for more empathic understanding and support by practitioners of birth mothers' urge to search for their child. There should exist the right to participate in the process of the child's adoption;<sup>130</sup> with the provision of open adoption, with some form of contact,<sup>131</sup> so far as is in accordance with the child's welfare. Bouchier

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regulations on adoption procedure were sharply criticised, law in this area was reformed with the Adoption Act 1976, which repealed the 1958 Act.

<sup>126</sup> Bouchier (1992), p.72.

<sup>127</sup> Ibid. p.73.

<sup>128</sup> Logan (1996), p.611.

<sup>129</sup> Bouchier (1992), pp.86-87.

<sup>130</sup> Ibid. p.92.

<sup>131</sup> Ibid. pp.100-101. 'Open Adoption' this term means that adoption includes the adoptees right to access to files which provide information on life history and access to information about birth family members. It may also mean that adoptee and birth family will retain some form of indirect or direct contact following the adoption. A helpful

concluded that 'despite improvements in adoption practice, these provisions are by no means universal and the position of the birth-mother is easily forgotten or ignored in deference to ensuring the best interests of the child'.<sup>132</sup>

## **2.7. COMPARISONS BETWEEN HISTORICAL AND CONTEMPORARY BIRTH MOTHERS**

Later studies criticised modern adoption policy and practice. Howe et al recognised that illegitimacy and stigma were no longer justification for the separation of mother and child, but the authors make important comparisons to between historical and existing adoption practice,

'The moral climate that deemed the unmarried woman unfit to be a mother has shifted, we now have a new group of 'unfit' mothers. These mothers fail to convince social workers and the courts that they are competent parents. In their attempts to give a child a permanent home the courts 'free' the child for adoption. Mothers who fight this nightmarish decision and lose, not only experience all the pain felt by mothers who voluntarily relinquish their baby, they suffer the added horror of having their children forcibly removed and adopted against their wishes'.<sup>133</sup>

Howe et al expand the argument that the relinquishment of historic adoption resonates strongly with current practice where the impact upon birth mothers is concerned,

'There are increasing numbers of women losing their children through the courts. Experts judge that children are suffering harm in their care, so they are removed and compulsorily freed for adoption.

They argue that,

Over the last ten years, studies have been completed and we know a good deal about these children and their new families, but we know very little about the birth mother. It is the child's future we are interested in and not the mothers. It mimics the history of baby adoptions. The suspicion is that

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discussion of open adoption can be found in Treacher and Katz (2000). See also Mullender (1991), BAAF.

<sup>132</sup> Bouchier (1992), p.106.

<sup>133</sup> Howe (1992), pp.4-5.

the traumas and stresses suffered by this new birth mother are very similar'.<sup>134</sup>

Howe's observations on the modern birth mother echo the experiences of past mothers, despite the disparities between relinquishment of a child and removal by the state,

'In the case of the older child, there is a long-standing relationship with the mother, they have a history no matter how deprived or sad, which cannot be denied. It will not be forgotten. The birth mother's loss is enforced. The relationship between mother and child is ended because other people have decreed it. This increases feelings of anger and helplessness. The modern-day birth mother and her experiences are likely to be the product of a legal judgment. She is officially assessed as unfit to be a parent'.<sup>135</sup>

Historical birth mothers were found to experience the onset of morbidity following relinquishment. Conversely, modern birth mothers may find existing mental illness is a precursor for child protection interventions. Mental illness can be used against birth mothers in court whilst care and support may be denied.<sup>136</sup> Janette Logan argues that long term implications of separation by adoption are severe, with emphasis upon poor mental health, but she raises concerns that professionals are 'biased and ambiguous' and largely ignoring the problems experienced by birth mothers in relation to the adoption of their child.<sup>137</sup> She calls for a greater awareness and understanding of birth mothers' needs, which are often inadequately addressed by the use of long-term medicalisation. She argues that the notion that a birth mother's significance ends at the point the child is placed for adoption is one of the key problems. This prevents the acceptance that birth mothers should be supported in the aftermath of their adoption experience.

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<sup>134</sup> Ibid. p.153.

<sup>135</sup> Ibid. p.154.

<sup>136</sup> Proudman (2012), p.989.

<sup>137</sup> Logan (1996), p.611.

She argues further that mental illness is a potential self-fulfilling-prophecy for birth mothers because,

‘Women’s socialization as second-class citizens and the inculcation of socially acceptable goals such as nurturing and motherhood are ingrained in society, so a woman’s failure to live up to these expectations compounds feelings of powerlessness and low self-esteem and renders women prone to lifelong depression’.<sup>138</sup>

Logan found that there remained ‘an unusually high incidence of mental health problems’<sup>139</sup> in her sample of birth mothers but she admits that her findings still leave questions unanswered. She asks, was their illness caused by the child protection intervention and adoption, or, was there a predisposed morbidity which was exacerbated by the ‘stressful life event’<sup>140</sup> of the adoption. She concludes that,

‘It is imperative that the long-term impact of adoption begins to be better recognized, not least so that the experiences of birth mothers are better understood, and their reactions to those experiences are not pathologized. Services to meet their needs must be improved, and professionals should learn to respond more positively’.<sup>141</sup>

Mason and Selman also investigated birth mothers and contested adoption.<sup>142</sup>

They advanced the recommendations set out by Logan on the importance of ‘proper counselling and support for birth mothers’.<sup>143</sup> There was no shortage of endorsement for services to help improve the quality of life for women. However, the problem was a lack of funding. The need for counselling to be ‘independent’ of the adoption agency was stressed by Mason and Selman, who discovered that birth mothers in their study were offered counselling by the social work teams

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<sup>138</sup> Ibid. p.612.

<sup>139</sup> Ibid. p.621.

<sup>140</sup> Ibid.

<sup>141</sup> Ibid. p.623.

<sup>142</sup> Mason (1997) pp. 21-28.

<sup>143</sup> Ibid. p.27.



who were involved in the adoption of their child. The respondents would not consider accepting offers of counselling from a source they believed to be indifferent to their needs, and therefore they coped with their loss unsupported.<sup>144</sup>

Charlton, Crank, Kansara and Oliver studied the contemporary birth mother. They found identical comparisons between historical and contemporary birth mothers and adoption,

‘Problems encountered by mothers who lose their children compulsorily parallel those where there have been adoptions by relinquishment. In common with the latter there may be long lasting sadness and depression which magnify with the passage of time. There may be deep seated yearning and the need to search. In both type of adoption there may be feelings of guilt, centring on the belief that more could have been done to have prevented the adoption’.<sup>145</sup>

Charlton et al. argue further ‘there is no more forceful intervention by the State into family life than compulsory adoption’;<sup>146</sup> and therefore ‘in child welfare there is no more disenfranchised group than these parents whose ties with their children have been permanently severed’.<sup>147</sup>

Charlton et al. were pioneers in carrying out research which recognised the trauma of adversarial court proceedings,

‘For birth mothers, attending court was a traumatic experience which resulted in feelings of humiliation and a sense of betrayal by the local authority which had been previously perceived as a helping agency. They felt ‘raped’ by the exposure of private family affairs, the microscopic attention to detail without putting it in the context of events in their life’.<sup>148</sup>

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<sup>144</sup> Ibid. pp. 25-27.

<sup>145</sup> Charlton (1998), p.4.

<sup>146</sup> Ibid.

<sup>147</sup> Ibid.

<sup>148</sup> Charlton (1998), pp.35-36.

Birth mothers told Charlton they felt deceived by a system which was initially put in place to help them parent their children. The adversarial process rendered them powerless. It had an acute effect on their ability to trust professionals in the future. Charlton's respondents recalled a process which aimed to demonise them from the beginning of an intervention.<sup>149</sup> Birth mothers unused to legal proceedings and the protocol in courts were astonished by the harshness of the process and completely lost in what Ryburn terms as 'a legal system which is reductionist, divorcing individuals from their wider society and family context'.<sup>150</sup> This experience renders birth mothers out of their depth and overly dependent upon their legal representatives. They were often alone in court, far from home, and not allowed to be accompanied by friends or family to support them because they were not parties to the proceedings.<sup>151</sup> Ryburn argues that adversarial proceedings are much more than demoralising to birth parents, they also set a precedence for 'a drive for victory over the interests of the child'.<sup>152</sup> The process he insists 'does nothing to engender compassion and sensitivity'.<sup>153</sup> Charlton's research into compulsory adoption is titled 'Still Screaming', the authors reflect that,

'The title was something we struggled with, until one day, I asked a worker on a new birth parent project for her first impression of the birth mothers she had met in a women's prison. 'It's the scream' she said, 'a silent one, but these women are still screaming'.<sup>154</sup>

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<sup>149</sup> Ibid.

<sup>150</sup> Ryburn cited in Charlton (1998), p.37.

<sup>151</sup> Ibid. p.37.

<sup>152</sup> Ryburn, M., 'The Effects of an Adversarial Process on Adoption Decisions' (1993) 17:3 *Adoption and Fostering* p.40.

<sup>153</sup> Ibid.

<sup>154</sup> Charlton (1998), p.22.

## 2.8. BIRTH MOTHERS AS 'VULNERABLE SUBJECTS'

Vulnerability is a collective feature of the human condition, it is sometimes a term used to define stigmatized subjects.<sup>155</sup> Vulnerability arises from the personification and location of individuals within society and its institutions. On a personal level, vulnerability refers to the continuous possibility of harm, injury or weakness. The birth mother has, in some form, always represented vulnerability. Historical birth mothers found that their freedom to remain unmarried and raise their children was removed by their own families, the church and legally endorsed by the state. They were often disowned by their families and many lived in deprivation. Modern birth mothers, often dependent on the state for financial support, and with multiple needs, experience the compulsory removal of their children when they are found to be abusive or neglectful or unable to provide a safe enough environment.

Fineman observes that Public and Health agencies associate 'vulnerability' with illness, deprivation, dependency, pathology, children and the elderly. Fineman has developed the concept of the 'Vulnerable Subject'. This is a reconceptualised legal object that replaces the self-sufficient liberal subject. When it is placed at the heart of political and social actions, the Vulnerable Subject develops the general ideas behind state responsibility. This new concept changes the relationship between individuals and the state and creates the absolute need for 'resilience'. This is the importance of understanding fully the interaction of and between individuals and institutions. This in turn legitimises claims calling for

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<sup>155</sup> Fineman, M, A., 'The Vulnerable Subject: Anchoring Equality in the Human Condition' (2008) 20:1 *Yale Journal of Law and Feminism* p.8.

effective state responsibility to ensure meaningful access and opportunity to its institutions.<sup>156</sup>

Fineman argues that replacing the liberal subject with the Vulnerable Subject would allow the state to become more responsive to and responsible for the vulnerable which in turn would create a more equal society.<sup>157</sup> If we were to consider this in the context of birth mothers; as liberal subjects they are capable of exercising autonomy in raising their children without the fear of state interference 'they are able to create barriers to keep the state out of their activities'.<sup>158</sup> If however they experience difficulties in the care of their child they become vulnerable to the state. The state may intervene under the child protection pretext 'by insisting that it terminates the relationship and dictating the terms under which separation may occur'.<sup>159</sup> Fineman suggests that instead of limiting vulnerability to 'populations', it should be seen as a 'universal, inevitable, enduring aspect of the human condition'.<sup>160</sup> This should exist at the heart of the social and state responsibility. 'Vulnerability' then ceases to be a negative and limiting defect but becomes a 'powerful conceptual tool which can be used to define an obligation for the state to ensure a more robust guarantee of equal protection'.<sup>161</sup> To understand vulnerability is to appreciate that despite individuals attempting to mitigate the effects of adverse or devastating events, they can never be fully eliminated, and some events will remain beyond the individuals control. This in turn creates a condition of dependency. Fineman concludes that

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<sup>156</sup> Fineman (2008) pp.1-5.

<sup>157</sup> Ibid. p.2.

<sup>158</sup> Ibid. p.5.

<sup>159</sup> By foster care or adoption.

<sup>160</sup> Ibid.

<sup>161</sup> Ibid. p.8-9.

politics, ethics and the law should thus be built around 'a complete and comprehensive vision of human experience if they are to meet the needs of real life subjects'.<sup>162</sup>

Interpreted into the experience of vulnerable birth mothers and their families, this vision would recognise that personal crises may be out of the individual's control. It would provide the necessary support at the point the vulnerability was identified, prior to the adversarial intervention of child protection powers. This early provision of help and support for vulnerable families was enshrined in the Children Act 1989, but, in reality, economic and political restraints limit the resources made available to families.<sup>163</sup> As Fineman points out, institutions themselves 'are not fool proof shelters, they are too vulnerable, they may fail in the wake of economic fluctuations'.<sup>164</sup> What we are left with in the absence of support for families in need is the argument that if adoption is inevitable, birth mothers' vulnerability should not be punished but should be catalyst for support and protection of their rights to promote equality in the process of adoption.

## **2.9. BIRTH MOTHERS ARE ENTITLED TO COMPASSIONATE SUPPORT**

Charlton's work is compassionate towards birth mothers; but it balances this perspective with the recognition that in most cases adoption was in their children's best interests. Despite this, they argue that birth mothers should not be punished for losing their children to adoption.<sup>165</sup> Charlton stresses that modern adoption is as detrimental to the well-being of birth mothers as historical adoption, now with the added ordeal of adversarial court proceedings. Modern birth

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<sup>162</sup> Ibid. p.10.

<sup>163</sup> See Bridge (2003) p.52.

<sup>164</sup> Fineman (2008) p.12.

<sup>165</sup> Charlton (1998) p.22.

mothers experience the same emotional problems as their historical sisters. Similarly, in 2001, shortly before the enactment of the ACA Caroline Bridge noted that,

‘Social science research into the fate and feelings of birth mothers confirms they do not forget the children to whom they gave birth and who were subsequently adopted. Their feelings amount to a form of life-long bereavement, particularly in the absence of post-adoption contact. This grief is as severe in its effect as a bereavement by death, yet the sharp focus for grief that death affords is missing’.<sup>166</sup>

Fifteen years after Bridge’s observations and following such significant reform of adoption it is questionable whether there are adequate services to support birth mothers with their loss and grief. This may well be relatable to the continuing lack of financial investment into birth parent support. It could also be pertinent to the fact that birth mothers are considered as underserving of help as their historical counterparts. They are expected to disappear after adoption so that no agency holds responsibility for their aftercare. Author and birth mother Sallie Greenwood explains how she viewed her own position in society after her child’s adoption,

‘I was a deviant female, I accepted the subjectivity that was demanded. I disappeared from the public arena and articulated the discourse of adoption as doing the best for my child. This is the position expected of a woman: to suppress her own needs for those of others, especially her children’.<sup>167</sup>

Neil’s recent study of mental distress in birth parents<sup>168</sup> suggests that little has changed for birth mothers since Van Keppel discovered severe mental anguish from loss by adoption 30 years ago. Neil highlights that the ACA sections 3 and 4 recognise the entitlement of birth families to independent support throughout, and after adoption proceedings. She discovered that mental distress in birth

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<sup>166</sup> Bridge in Herring (2001), p.216.

<sup>167</sup> Greenwood in Treacher, (2000), p.72.

<sup>168</sup> Neil, E., ‘The Mental Distress of the Birth Relatives of Adopted Children: ‘Disease’ or ‘Unease’ (2013) 21(2) *Health and Social Care in the Community* 191 at p.199.

mothers, was exceptionally high. She found this distress, which was directly linked to the adoption, was still largely unrecognised by mental health workers and adoption support providers. This failure to address the needs of birth mothers can have serious long-term repercussions particularly with subsequent children, Neil argues that,

‘Birth mothers who have lost a child to adoption will often go on to have further children. In such situations, social care workers need to recognise the adoption-related distress of mothers, especially as feelings of loss and anxiety could further intensify when further children are born. Support services have an important role to play in enabling successful parenting which prevents subsequent children being adopted’.<sup>169</sup>

Reflecting on the experiences of birth mothers over time it is clear that there are fundamental problems with the ideology of adoption. The tensions that surround the use of adoption raise many questions, for example: is it satisfactory that adoption causes long-term harm to so many birth mothers? Does there not always have to be a loser in the adoption triangle? Is it fair that many birth mothers endure an existence of grief and regret to ensure their children experience stability? Is losing a child to adoption the punishment they deserve for failed parenting? Are birth mothers rightly insignificant where children's welfare is pertinent? Should each new generation of inadequate mothers continue to have their children removed when many themselves have suffered harm as children? Finally, and importantly, is it not possible to look to other countries for methods that seek to keep families together in an attempt to break the cycle of intergenerational problems with parenting?

When researching adoption there must be continued focus placed on the fact that some children suffer from terrible abuse at the hands of their parents and carers.

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<sup>169</sup> Ibid. p.198.

They must be removed from them and cared for by a responsible state who not only utilise adoption in an attempt to heal a child's physical and psychological wounds but to place them on the path to a happy and fulfilling life. However, the system cannot guarantee that adoption will happen or that children are safer in care, as Herring observes,

'Unfortunately, the history of state-organised child care in England and Wales is bleak, with widespread evidence of abuse and mistreatment of children in children's homes. Indeed, it is not difficult to find cases where the intervention of the state has made matters worse, not better, for children. The Government has accepted that children in care have a less advantageous start in life'.<sup>170</sup>

It is also not conclusive that adoption is the right solution for all children, but it happens that each year a substantial number of children will be adopted.<sup>171</sup> These children will leave their mothers who, without a voice, will become just another set of statistics.

## **2.10. CONCLUSION**

This chapter has reviewed the literature which provides the foundation for the research. It has presented the concepts of adoption and of birth mothers by examination of literature from a number of academic disciplines, including autobiographical work by birth mothers themselves. This diverse range of sources illustrates that adoption as a concept is highly subjective, it can mean different things to different people, but each view is linked by the acknowledgment that it is controversial. Over time that has not changed. The chapter moved on to provide the theoretical basis for the empirical aspect of the thesis, with analysis of previous qualitative research into the lives of birth mothers from the 1950s to

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<sup>170</sup> Herring, J., *Family Law*, (2013), p.639

<sup>171</sup> Andrew Bainham does not argue against adoption but suggests it is only suitable in rare cases see Bainham, A., in Herring, J (2015), p.681.



the present day. Research has found similarities between historical and modern birth mothers. It has shown that previous studies are consistent in their findings that birth mothers often experience unresolvable grief that is enduring, because there is no death of their child to mourn. Previous research also emphasises the need for support and an open and honest adoption process to allow birth mothers to adjust to their loss. The majority of previous research concerns the emotional impact of adoption on birth mothers. This chapter has therefore identified the gap in the research where little appreciation exists of birth mothers' experiences of the legal process of adoption.

## **CHAPTER THREE: METHODOLOGY**

### **3.0. INTRODUCTION**

This chapter begins with justification of why a qualitative, socio-legal study of birth mothers is a useful progression for discourse in this field of research. It then provides a critical discussion on the research design, the methodological approach, the ethical implications and proposed methods of data analysis. It moves on to discuss the personal element of the research along with an argument for the use of reflexivity as a method of addressing researcher bias, both conscious and unconscious. It goes on to defend the use of subjective data with arguments put forward on the validity of presenting personal perspectives as evidence of the workings of the legal system. It then discusses the way in which the interview transcripts were analysed within a feminist tradition of leaving narratives intact with minimal interference. The final part of the chapter maps the journey of data collection from participants with discussion of the unforeseen circumstances which can arise from qualitative research.

### **3.1. TRADITIONAL LEGAL RESEARCH COMPARED WITH SOCIO-LEGAL RESEARCH**

Traditionally, legal research carried out by lawyers involves a doctrinal approach of studying 'black letter' law.<sup>1</sup> Primarily this type of research focuses on such issues as the study of case law, clarifying law from analysis of legal authority, identifying legal content in factual matters, using legal reasoning to critique the

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<sup>1</sup> McConville, M, Hong Chui, W., (Eds), *Research Methods for Law*, (2007), p.4.

law and putting forward recommendations for law reform.<sup>2</sup> In essence, conventional legal research originates from texts rather than from an empirical<sup>3</sup> investigation of how the law operates in action. It intellectualises and objectifies the law and allows us, if we are so inclined, to circumvent subjective investment in our research.<sup>4</sup>

Doctrinal legal research is a useful method which is low cost, ethically sound and has accessible data. Although this approach is valid and effective within its parameters, the aim of this thesis is to expand the research horizons beyond the desk based method. Fortunately, it is now acceptable for the legal researcher to move into more sociological research methodologies which support and enhance a legal study. This approach is known as socio-legal research. In straightforward terms this is defined as,

‘A sociological approach which seeks to gain empirical knowledge and an understanding of how the law and legal proceedings impact on the parties involved. It fills a gap in the understanding of 'law in action' found in black letter methodology perspective’.<sup>5</sup>

This outline captured the methodology that would suit this research. A socio-legal design would legitimatise a search for answers to questions which could not be found in law texts. With a sociological approach the research can include an exploration of the structures by which the law, power and inequality functions in society.<sup>6</sup> More specifically questions can be raised about how the law impacts on the lives of birth mothers. It is expected that this approach will allow comparisons

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<sup>2</sup> Ibid.

<sup>3</sup> Empirical means that something (or its impact) is observable, see Punch, K, F., *Introduction to Social Research: Quantitative and Qualitative Approaches*, (2005), p.27.

<sup>4</sup> Law Teacher, *Writing a Law Dissertation Methodology*, <https://goo.gl/tHZnrB> (Accessed 14 July 2016).

<sup>5</sup> Ibid.

<sup>6</sup> Gilbert, N., *Researching Social Life*, (2008), p.9.

to some of the existing theories<sup>7</sup> that surround birth mothers and adoption with this study's findings. Branching into social theory when the author's discipline is law has presented considerable challenges. It is therefore unlikely that this research will present as though created by a skilled social researcher, rather it demonstrates that a legal researcher can, if they choose, embrace the broader social aspect of law that may be overlooked through more orthodox legal study.

### **3.2. RESEARCH DESIGN**

Gilbert stresses the importance of a good research design, observing that 'every element of the research process is considered and planned from the methodological approach to the methods of data collection and analysis'.<sup>8</sup> David and Sutton define how the researcher must 'develop the identification process from an idea to a practical activity and it is here that the researcher's own interpretation of the problem, and the best way to research it, comes into play'.<sup>9</sup> This is not a decision to be made hastily, numerous draft research methods were considered and rejected before a decision on the design was reached. Punch simplifies the philosophy behind research questions, suggesting criteria that helps to identify exactly what is needed for 'good' research questions. They should be: clear, specific, answerable, each question should relate to the other in some meaningful way, relevant, interesting and worthwhile.<sup>10</sup> With this formula in mind the overall aim of the research was to carry out a small-scale, empirical study of approximately 25 birth mothers whose children had been adopted since the passing of the ACA 2002.

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<sup>7</sup> Ibid, p.31.

<sup>8</sup> Gilbert (2008), p.58.

<sup>9</sup> David, M, Sutton, C, D., *Social Research: An Introduction*, (2011), pp.23-24.

<sup>10</sup> Punch (2005), p.47.

Research is sometimes motivated by personal experiences.<sup>11</sup> Adoption has personal significance to me because I am a birth mother as well as a researcher. It was as a researcher that I sought to gain greater understanding of the public child law system<sup>12</sup> which had facilitated the adoption of my children with such haste and relative ease. I was unable to comprehend the absolute enormity of the power of the law. It empowered organisations to physically separate my children from me, potentially for the rest of our lives. It was many years before I fully understood what had happened. When I finally did understand, I ardently believed that my family was treated unfairly and unjustly. This experience is the primary reason why I became inspired to study law and research public child law. It is not unusual for personal experience to motivate the need for knowledge, as Russell and Kelly say 'good research springs from a researcher's values, passions and preoccupations'.<sup>13</sup> Despite agreeing with Russell and Kelly, for some time before I submitted my proposal, I questioned whether it was feasible for me to carry out such research. The answer was found within the research literature where academic validation of personal experiences as academic study was endorsed. According to Kim Etherington,

'Our personal history, when it is processed in ways that allow us to remain in contact emotionally and bodily with others' whose stories remind us of our own, can enrich our role as researcher. Our empathic resonance allows us to hear others' experiences without the need to defend ourselves against that knowing'.<sup>14</sup>

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<sup>11</sup> Gilbert (2008), p.45.

<sup>12</sup> Jenkins (2013), p.383.

<sup>13</sup> Russell, G, M., Kelly, N, H., 'Research as an Interactive dialogic processes: Implications for Reflexivity', (2002) 3 *Forum Qualitative Social Research*.

<https://goo.gl/BNgPcs>

(Accessed 13 August 2016).

<sup>14</sup> Etherington (2004), p.180.

It became clear that it was not only possible to begin with personal experience, it could in fact enhance the project. In social science this method is known as 'induction' whereby a researcher observes a single case then studies the same events in comparable cases. This leads to the construction of a general theory which embraces all of the cases.<sup>15</sup> Clearly, the difference here is rather than beginning with the observation of a single external case, the case in question is personal to the researcher. It is this personal involvement that provides a research topic underpinned with what Loftland calls 'deep familiarity'.<sup>16</sup>

For the research design the preferred approach was qualitative because, as Thody explains, 'while quantitative researchers aim at reducing data to one voice, qualitative researchers retain multiple voices'.<sup>17</sup> Qualitative research provides the potential for obtaining rich and detailed data.<sup>18</sup> It is data that provides empirical information about the world we live in primarily through use of words.<sup>19</sup> Where legal research can be inflexible where theory is concerned, qualitative research holds an assumption that there is more than one correct form of knowledge. It maintains that there are many versions of reality which are dependent upon and relational to context they are happening in.<sup>20</sup> In designing the research, the intention was to ask birth mothers how they experienced the procedure of their child's adoption and how they felt about it. This approach is not concerned with statistics, but how they made sense of and understood the adoption process. The

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<sup>15</sup> Gilbert (2008), p.27.

<sup>16</sup> Loftland, J., 'Analytic ethnography: Features, failings and futures', (1996) 24(1) *Journal of Contemporary Ethnography* 30 p.44.

<sup>17</sup> Thody, A., *Writing and Presenting Research*, (2006), p.129.

<sup>18</sup> Braun, V., Clarke, V., *Successful Qualitative Research: A Practical Guide for Beginners*, (2013), p.4.

<sup>19</sup> Punch (2005), p.56.

<sup>20</sup> Braun (2013), p.6.

aims are to learn about the events leading to the adoption and how individuals experienced interactions with social workers. To listen to account of their feelings during court proceedings and whether they gave their consent to adoption. To hear their views of their legal representation, the degree to which they have any contact with their child, and if they were offered counselling. The objective was to gain insight into the birth mothers' perspectives, so a 'qualitative experimental' approach was followed. This means that participants' interpretations are prioritised, accepted and focused upon;<sup>21</sup> 'letting participants speak for themselves is a way to show readers what has been found'.<sup>22</sup> Similar studies carried out in disciplines of sociology and psychology revealed that research into birth mothers was often qualitative in nature.<sup>23</sup> This type of research provided the most tangible and candid experiences. It was not possible to locate legal academic studies of birth mothers and adoption, despite the process being a legal one which requires a court to oversee the adoption procedure. A wealth of secondary data concerning birth mothers can be found in adoption case transcripts where, although their circumstances are discussed in forensic detail, birth mothers' views are not considered, and their voices remain unheard. It is, therefore, conceivable to carry out research which would allow an investigation into birth mothers within this qualitative agenda. This research is not large scale enough to give an inclusive representation of birth mothers and their experiences of adoption, yet it will provide some meaningful contribution to existing knowledge

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<sup>21</sup> Ibid. p.21.

<sup>22</sup> Watt, D, University of Ottawa, Ontario, Canada., 'On Becoming a Qualitative Researcher: The Value of Reflexivity', (2007) 12 *The Qualitative Report* 82 p.95.

<sup>23</sup> See Memarnia, N, Nolte., et al., 'It felt like it was night all the time: listening to the experiences of birth mothers whose children have been taken into care or adopted', (2015) 39(4) *Adoption and Fostering: the journal of the Association of British Adoption and Fostering Agencies* pp.303-317.

about adoption and birth mothers and could prove illustrative for subsequent evaluative research.

The socio-legal approach can be extremely challenging to those used to studying solely within a legal discipline, the balance between the social and legal phenomena must be carefully constructed to provide a clear and comprehensive picture of the topic in question. In searching for guidance on achieving such balance, I came across the words of the US jurist Catherine MacKinnon, who justified her own methodology by simply stating 'I hope to bring to the law something of the reality of women's lives...presenting evidence from women's observations on their own lives'.<sup>24</sup> This uncomplicated aim is precisely that which grounds this thesis in socio-legal research.

### **3.3. INTIMATION TOWARDS A FEMINIST METHOD**

The methodology was not originally designed with a feminist perspective in mind, but over time, as the work developed, feminist approaches towards research became more relevant to each stage of the project. The starting point was that this is research carried out by a woman and it is about women.<sup>25</sup> According to Reinharz 'feminists are interested in women as individuals *and* as a social category'.<sup>26</sup> This was a first attempt at following a feminist methodology and thus it does not claim to hold expertise in this field. The feminist philosophy gradually became integrated into the methodology and Howe suggests that inexperience is not a reason to reject a feminist approach,

'During the last two decades the feminist movement has effected the way women think about their lives. Women have become aware of their unequal position in society, and, like it or not, their consciousness has

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<sup>24</sup> MacKinnon, K., *Sexual Harassment of Working Women*, (1979), p.xii-xiii.

<sup>25</sup> Harding (1987), p.11.

<sup>26</sup> Reinharz, S., *Feminist Methods in Social Research*, (1992), p.241.



been raised. This is the case whether or not a woman considers herself to be a feminist'.<sup>27</sup>

Although there is a great deal of complexity in understanding feminist approaches to research, Olesen identifies the premise that underpins it as,

'The importance of centring and making problematic women's diverse situations and the institutions and frames that influence those situations, and then to refer the examination of that problematic to theoretical, policy or action frameworks in the interests of realising social justice for women'.<sup>28</sup>

The feminist approach is therefore universal in that it can be applied to research in any discipline that aims to critique or challenge a system which has a bearing on the lives of women. Feminists argue that social science has long focused its analyses from a male perspective and has sought to answer only questions posited by men.<sup>29</sup> Sandra Harding cites the example of legal policy towards rapists and raped women which 'leaves intact the normal standard of masculine sexual behaviour'.<sup>30</sup> In a similar way, it can be argued that a feminist perspective on birth mothers and adoption law rather than a masculine one is likely to find very different outcomes.<sup>31</sup> Further, Haig suggests that there are other common features of feminist methodology, these include: the rejection of scientific methods or positivism, the adoption of a liberated methodology and the pursuit of non-hierarchical research relationships.<sup>32</sup> It is of principal importance that feminist methodologies seek to empower women, because feminist theory argues that other masculine dominated methodologies often contribute to the subordination

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<sup>27</sup> Howe (1992), p.103.

<sup>28</sup> Olesen, V., 'Feminisms and Models of Qualitative Research', in Denzin, N.K, Lincoln, Y.S, (Eds), *Handbook of Qualitative Research*, (1994), pp.158-74.

<sup>29</sup> Harding (1987), p.6.

<sup>30</sup> Ibid.

<sup>31</sup> Ibid.

<sup>32</sup> Haig, B.D., *Feminist Research Methodology*, in Keeves, J.P., (Ed), *Educational Research Methodology and Measurement: An International Handbook*, (1997), pp.180-185.

and the oppression of women. This is an important factor here because it is known that historically adoption practices have sought to control women by marriage and punish them for giving birth as unwed mothers. Careful thought was given to whether this study could contribute to the empowerment of women. In objective terms it may do so by raising awareness of the continuing inequality of the adoption process for birth mothers, and subjectively, it may demonstrate to participants that their voices are being listened to and they are not being judged, condemned or criticized.

Another important function of feminist methodology is emancipation.<sup>33</sup> It is hoped that participants experience some emotional freedom by sharing their views and feelings, as it is known that speaking about our experiences can be therapeutic. It is somewhat ambitious to assume that by telling their stories participants will experience some life changing epiphany, but the potential exists to work with participants in a proactive manner which encourages them to focus on their futures by being interested in their wishes and goals. Lather argues that feminist method should always be action based and researchers must,

‘engage in feminist efforts which empower through empirical research designs which maximise a dialogic, dialectically educative encounter between the researcher and the researched. Our intent should be to consciously use our research to help participants understand and change their situations’.<sup>34</sup>

The concept of action research covers a number of different methodological aims in particular ‘evaluation research’<sup>35</sup> which Punch defines as ‘aiming to assess the effectiveness of different actions in meeting needs or solving problems. It is used

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<sup>33</sup> Punch (2005), p.135.

<sup>34</sup> Ibid. p.137.

<sup>35</sup> Ibid. p.138.

to evaluate individual and organizational behaviour'<sup>36</sup> and, 'the demystification framework' which is based upon creating a potential for change by gaining knowledge about a certain group where there is a lack of research, with the aim to 'raise consciousness among the relatively powerless'.<sup>37</sup> I would suggest that this research attempts to integrate both evaluation and demystification, first by critical appraisal of the law in its effectiveness at meeting the needs of birth mothers; and second birth mothers' views on adoption will provide clarity to an impervious area of adoption. Feminist theory also challenges society as unjust toward women and bases this inequality on patriarchy.<sup>38</sup> This model appears compelling because it suggests that a hidden dimension of child removal and adoption exists which concerns issues around the punishment of women or 'mother blaming'<sup>39</sup>

Finally, the pure focus of a feminist approach was relevant because of its focus on the views of the participants, this a key objective of the research design. Reinharz, discussing a study by Mary Belenky, defines the essence of open ended interviewing of women,

'We wanted to hear what the women had to say in their own terms rather than test our own preconceived hypotheses, particularly since we included disadvantaged and forgotten women whose ways of knowing have seldom been examined by academic researchers'.<sup>40</sup>

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<sup>36</sup> Ibid.

<sup>37</sup> Ibid.

<sup>38</sup> Gilbert (2008), p.10.

<sup>39</sup> 'Mother Blaming' is not explored extensively in this work but for useful analysis see Jackson, D., Mannix, J., 'Giving Voice to the Burden of Blame: A feminist study of mothers' Experiences of mother blaming', (2004) 10 *International Journal of nursing Practice* pp.150-158.

<sup>40</sup> Reinharz (1992), p.240.

### 3.4. THE VICIOUS CIRCLE OF STIGMA

The thesis will provide a snap-shot of the lives of birth mothers following the adoption of their child or children. By collecting the data directly from birth mothers, the intention is to give them a voice through the research that has previously been denied. During interactions with birth mothers it became apparent that they feared taking part in research which asks them for their views. Previous research demonstrates that they are afraid to speak because of their stigmatization in society.<sup>41</sup> Being afraid to speak about experiences reinforces stigma, which then goes unchallenged. The objective is to challenge the stigma which surrounds these women who are often generalised collectively as 'bad' and 'unworthy' mothers by the media. As a birth mother myself I personally experienced the trauma, the loneliness and the shame of losing children to adoption because of mental illness and domestic violence. Stigma was a suppressive force which prevented me from talking about my experiences for over a decade. I had no identity other than a 'bad mother' who had failed her children. However, it must be stressed that at no point in the research design was it planned to measure the experiences of participants against my own because this is inappropriate to do. Reinharz explains 'I will never know the experiences of others, but I can know my own, and I can approximate theirs by entering their world'.<sup>42</sup> In the spirit of transparency there was certainly the drive to discover if my own experiences had been 'ordinary' by researching others in similar situations. This approach is described by Berg as considering 'subjective motivational factors' or reflecting on 'autobiographical inspiration'.<sup>43</sup> The

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<sup>41</sup> Proudman (2012), pp. 987-990.

<sup>42</sup> Reinharz, S., *On Becoming a Social Scientist*, (1984), p.365.

<sup>43</sup> Berg, B.L., *Qualitative Research Methods for the Social Sciences*, (2009), p.202.

sociologist, Foucault, was critical of Western society with its strict laws and rules about what was acceptable and normal behaviour. He was sceptical of the 'expertise and good intentions of particular authorities and institutions that guarantee good outcomes'.<sup>44</sup> In other words, perhaps the idea of child removal, enforced adoption and an adversarial court process reassures us that all is well in the child law system, but Foucault invites us to consider that these actions, that are often taken for granted as being fair and reasonable, may actually be far from that. There should be a willingness to shift the focus to consider other perspectives, which may be uncomfortable, but are necessary if research intends to disseminate the reality of the state's actions against individuals. As Gilbert notes, embracing Foucault's scepticism of society opens innovative new paths of research.<sup>45</sup>

### **3.5. METHODOLOGY: PARADIGM, ONTOLOGY AND EPISTEMOLOGY**

In designing the methodology, the researcher should critically consider their own subjective position. According to Naomi Black, feminist research 'insists on the value of subjectivity and personal experience'.<sup>46</sup> Such an approach allows a researcher to reflect on how their beliefs and assumptions will shape the research and subsequent findings. In social science a model or 'paradigm' consists of 'a set of assumptions about how we know the world and what we do when we conduct research'.<sup>47</sup> Designing an empirical study means that there must be consideration of the research philosophies of ontology and epistemology. Ontology is the term used to describe the way in which researchers assume

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<sup>44</sup> Foucault, M., *Discipline and Punish: The Birth of the Prison* (1977), p.33-35.

<sup>45</sup> Gilbert, N., *Researching Social Life*, (2008), p.12.

<sup>46</sup> Black, N., *Social Feminism*, (1989), p.75.

<sup>47</sup> Gilbert (2008), p.137.

different perspectives about the nature of reality.<sup>48</sup> Individual's beliefs can then be grounded in a particular research model.

It is important to identify ontology at the beginning of a project because the design of the research is determined by this.<sup>49</sup> Ontology also associates itself with the question of whether a study of social phenomenon is viewed objectively or subjectively. This research is focused upon a subjective approach because this aspect of ontology, 'subjectivism', is said to 'perceive that social phenomenon is created from perceptions and consequent actions of those social actors concerned with their existence'.<sup>50</sup> Using subjectivity in legal research is challenging, because readers of law are taught to be analytical and objective. Conversely, subjectivism means that the research design can be approached more holistically, with freedom to treat participants as individuals rather than as a collective representation of a legal issue.

Epistemology is a philosophy which concerns the way in which researchers view what can be accomplished with research.<sup>51</sup> The research aims presented the possibility of a number of epistemological approaches but in particular interpretivist and constructivist positions. The interpretivist approach holds the philosophy that research seeks explanations and understandings by the development of narratives through qualitative data.<sup>52</sup> Storytelling is argued by qualitative researchers as powerfully dynamic, as Etherington notes 'a story is not merely a chronicle of events, a story is an account of events set against a

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<sup>48</sup> Ibid. p.138.

<sup>49</sup> Queens University Belfast, *Ontology, Research Methodology*, (2016), <https://goo.gl/R9LWfb> (Accessed 18 August 2016).

<sup>50</sup> Ibid.

<sup>51</sup> Gilbert (2008), p.138.

<sup>52</sup> Ibid.

landscape of moral values'.<sup>53</sup> A constructivist philosophy is suited to qualitative research which incorporates, amongst other methods, the use of open ended questions. It allows the researcher to find a position within the context of the research and it permits the bringing of personal values into the study.<sup>54</sup> The data that is generated may be interpreted or constructed with different meanings by different individuals. This interpretive autonomy will allow the collection and analyses of the data not just as a researcher but as a birth mother possessing what social researchers call 'insider status'.<sup>55</sup> Having insider status means that the data will be interpreted with an intrinsic subjectivity which will be different to the same data interpreted by a researcher who Gilbert suggests 'may be predisposed to see the world quite differently to their respondents'.<sup>56</sup> This in turn reflects the epistemology that I and my participants share a common link, and from that connection we shall create or construct knowledge simultaneously. From these positions the perspective as a researcher with insider status will break down the researcher/researched hierarchy. This will be as much a personal learning experience as it will be an academic one because Jenkins asserts that 'where knowledge is co-constructed a research project must involve some degree of mutual exploration and discovery'.<sup>57</sup>

### 3.6. ETHICAL CONSIDERATIONS

Gilbert notes that 'researchers have to take account of the effects of their actions upon their subjects and act in such a way as to preserve their rights as human

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<sup>53</sup> Etherington (2004), p.193.

<sup>54</sup> Research Methodology, *Constructivism Research Philosophy*, (2016), <https://goo.gl/E4Y78z> (Accessed 12 August 2016)

<sup>55</sup> A researcher with insider status shares some common identity with her participants, Braun (2013), p.10.

<sup>56</sup> Gilbert (2008), p.18.

<sup>57</sup> Jenkins (2013), p.374.

beings, this is ethical behaviour'.<sup>58</sup> In a study which concerns vulnerable participants, or those from marginalised groups, there are significant ethical considerations requiring the approval of the University Ethics Committee. The most rigorous approach to take was to provide as much substantial information as possible to inform the panel that deep thought and sensitivity had been applied towards potential respondents;<sup>59</sup> and further a consideration of all of the risks and limitations attached to research of this kind. In the absence of a definitive methodological approach the application was made with a sample questionnaire and a participant information sheet.<sup>60</sup> The questionnaire was physical evidence which demonstrated the kinds of issues which would be addressed with the participants. It also provided a framework for the kind of information needed to reach the study's aims and objectives.<sup>61</sup> Gilbert suggests that a questionnaire should be based upon previous, similar studies.<sup>62</sup> Accordingly the questionnaire was created with reference to studies concerning birth mothers carried out by Bouchier et.al, Charlton et.al, and Howe et.al.<sup>63</sup> With some adaptations the format comprised of questions which were centred on the legal process of adoption, as well as the personal experiences of participants. It was not certain that the questionnaire would yield the results sought. At the theoretical point of the study, the idea of undertaking interviews with the target population seemed not only unachievable but ethically problematic given the sensitivity of the topic. A

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<sup>58</sup> Gilbert (2008), p.146.

<sup>59</sup> Ibid. p.196. At the stage of applying for ethical approval the research design did not include interviews but the completion of a questionnaire. Further ethical approval was sought to carry out interviews.

<sup>60</sup> Appendix p.375 Copy of questionnaire.

<sup>61</sup> Bell, J., *Doing Your Research Project: A guide for first-time researchers in education, health and social science*, (2005), p.57.

<sup>62</sup> Gilbert (2008), p.188.

<sup>63</sup> Bouchier (1991), Charlton (1998), Howe (1992).



questionnaire, with open ended questions, seemed a practical option because it would offer participants the chance to provide their own views, although, Bell suggests that open ended questions mean harder to analyse answers; nevertheless, during the early stages of research this felt like the only method available to gather the required personal perspectives.<sup>64</sup>

The issues of confidentiality and anonymity must be considered. It was difficult to maintain complete anonymity because of the need to know who had provided the data should they choose to withdraw later. So, where anonymity was concerned the participants' names were subsequently removed from the data and replaced with pseudonyms<sup>65</sup> which are confidentially linked to their real names only for their right to withdraw from the study.<sup>66</sup> This would allow for ease of identification and removal of their data. The birth mothers were advised that no person except the researcher would be aware of their real identities.<sup>67</sup> Berg explains that confidentiality is the 'active attempt to remove from data any information that might indicate the subject's identity'.<sup>68</sup> Participant confidentiality would be protected by removing personal information about them or any third party referred to. Only alias first names would be used for participants and details of children; local authorities, or any professionals involved would be deleted or blacked out of the data. Paper copies of the data would be securely retained for the required length of time and electronic data would be stored in a password protected file.

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<sup>64</sup> Bell (2005), p.137.

<sup>65</sup> Ibid. p.91.

<sup>66</sup> No respondents withdrew but following their interviews 6 women requested that some of their comments be removed from the data.

<sup>67</sup> Ibid. pp.48-49.

<sup>68</sup> Berg (2009) pp. 90-91.

## **INFORMED CONSENT AND THE RIGHT TO WITHDRAW**

Good ethical behaviour includes the seeking of informed consent from the participants. Gilbert reminds the researcher that ‘the voluntary consent of the human subject is absolutely essential’.<sup>69</sup> Informed consent means two things: the participants are giving consent to engage in research and that consent is informed. This means that before they sign consent, each person must be given all the necessary information about the study and what is required of them if they take part. Informed also means that if any information provided is not clear, or the participants have any questions, they can contact the researcher and ask for clarification. It is also important to ensure participants have adequate time to consider the implications of being involved. A gap of around one week was left between sending the information and contacting the respondent if they had not already made contact.<sup>70</sup> The participants were informed that they were free to withdraw their consent up until the time when the data would be analysed and written up.

## **DISCLOSING INSIDER STATUS TO THE ETHICS PANEL**

At the point of completing the ethics application, I decided to disclose my position as a birth mother who had experienced the personal loss of adoption of my own children twelve years earlier. It seemed unethical not to make the panel aware. The risk of researcher bias, both conscious and unconscious, in the way I collected, interpreted and disseminated data was too great to conceal my position. Sharing my personal information with the panel and with my supervisor caused me great anxiety; not only because I feared the ethics panel would refuse

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<sup>69</sup> Gilbert (2008), p.151

<sup>70</sup> Ibid. p.150

my application because of the inherent risk of bias, but also, on a deeper level, I feared being judged as an individual, colleagues that knew me only as a student would now learn the truth about my past, something I had worked hard to overcome. Therefore, I felt relief to receive ethical approval and continue to be accepted and valued within my institution. At that time some enduring and deeply ingrained feelings of stigma and personal shame began to break down.

### **3.7. REFLEXIVITY: INTEGRATING MYSELF IN MY RESEARCH**

Once I had disclosed my position to the ethics panel, I began to wonder if it would be possible to make myself transparent within the project itself. This was with the desire to overcome the continuing uneasiness I possessed around issues of bias and the validity of my research. Even in the absence of these factors the essence of the study was rooted in my own experiences, so surely it was counterproductive to deny or hide my own position to the reader. DeVault suggests that there *is* room for personal reflection in social research,

‘Social scientists are trained to think analytically, but we are less prepared to apply our analytical skills to our own experience. We are not taught to write about whatever self-analysis we can achieve; rather we edit these insights out of our text. I suggest that we need to become more sophisticated and reflective writers in order to consider where our personal stories lead and what they convey’<sup>71</sup>

Behar argues that openness in research can blur the lines of power play between the researcher and the researched, she explains that ‘we ask for revelations from others, but we reveal nothing about ourselves; we make others vulnerable but we ourselves remain invulnerable’.<sup>72</sup> These arguments validated personal involvement in research, especially with the use of reflexivity. Reflexivity is argued

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<sup>71</sup> DeVault, M, L., *Personal Writing in Social Research, Issues of Production and interpretation*, in Hertz (1997), p.222.

<sup>72</sup> Behar (1996), p.273.

by Gilbert as 'ethically important because it prompts us to ask questions about what we are doing as researchers'.<sup>73</sup> Etherington believes that '[reflexive] research encourage the inclusion of the researcher's story thus making transparent the values and beliefs that are held, which will certainly influence the research process and its outcomes'.<sup>74</sup> My first encounter with methodological reflexivity came from the work of Sion Jenkins,<sup>75</sup> who, as an insider researcher, disclosed and published his own subjective involvement with his participants. Jenkins had previously been acquitted of murder and was subsequently researching the 'miscarriage of justice community' in their endeavours to secure appeals/acquittals. Reflexivity allowed Jenkins to make his preconceptions from his own experiences transparent to the reader. He also took the opportunity to reflexively examine his own experiences of reliving traumatic events through studying those with whom he had a shared experience. Jenkins honesty and frankness made for a powerful narrative and I could strongly relate to his position. Taking a similar approach meant I could legitimately incorporate my own experiences in the analyses. There was no need for me to remain invisible, I could become an integral part of my own research. It also meant that I could justifiably disclose my insider position to my participants as Jenkins had done successfully, with the additional benefit of avoiding unreliability by transparency about his position.

Reflexivity as a concept simply means 'consciousness about being conscious and thinking about thinking'.<sup>76</sup> It requires that the researcher critically reflects on

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<sup>73</sup> Gilbert (2008), p.19.

<sup>74</sup> Etherington (2004), p.27.

<sup>75</sup> Jenkins (2013), p.387.

<sup>76</sup> Michalowski, R, J., *Ethnography and Anxiety*, in Hertz (1997), p.49

their own role in the research process.<sup>77</sup> But reflexivity should not be treated as nothing more than standard critical analysis, there are consequences attached to its use. Ellis explains that where a project begins as social science, adopting reflexivity transforms it into 'an interpretive human study and narrative enquiry'.<sup>78</sup> Clearly this is a move not without risks both academic and personal, but I had spent the last decade reflecting on the events which shaped my life and my identity, I had little fear of openness, truth, and all the consequences that came with them

Reflexivity can create a dynamic interaction between the researcher and the participant, it challenges us to become aware of our own ideologies, it creates transparency around ethical issues, it promotes reflection on the role of an insider and it validates the study by informing the reader of the context in which the data is located.<sup>79</sup> Watt explains that using reflexivity makes the researcher more aware of that which they may have unconsciously failed to see in their data.<sup>80</sup> This was very important because I was mindful that some of the realities of the findings may be difficult for me to acknowledge given my subjective position. I was also determined to avoid any form of power imbalance between myself and my participants. I sensed that they, like I once did, would have felt disempowered by the adoption process and would avoid any suggestion of authority. According to Etherington, reflexivity can remedy potential disparity between researcher and participants,

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<sup>77</sup> Braun (2013), p.10

<sup>78</sup> Ellis, C., 'On the Demands of Truthfulness in Writing Personal Loss Narratives', (1996) 1 *Journal of Personal and Interpersonal Loss* 151 at p.155.

<sup>79</sup> Etherington (2004), p.19

<sup>80</sup> Watt (2007), p.82

‘When we enter into relationships with our participants’ issues of power will inevitably come into focus. We are required to constantly scrutinize and interrogate our own positions, views and behaviours, turning back onto ourselves the same lens through which we examine the lives of participants’.<sup>81</sup>

Although it was clear from the literature that reflexivity is a valid and principled approach I still felt as though it must be exercised with careful consideration of my motives, because as Watts notes,

‘We researchers should be wary of the desire to justify our own experience. It is important to be interested in the topic, but we cannot allow emotional attachment to preclude the open learner’s attitude that is necessary for good data collection and analyses’.<sup>82</sup>

This argument left me with a sense of unease about my underlying intentions. I re-questioned my motivations for the research. I asked myself, am I unconsciously using this opportunity to attempt to vindicate my own encounters with the legal system at the expense of future participants? I reflected over this for some time before I tentatively concluded that I had progressed in my personal life, and in my professional development to be certain that I was conducting this study for no unconsciously covert reasons. I had honestly and transparently stated my motives in my aims and objectives.

Reflexivity operates on different levels. It can be applied to research in various ways, from ensuring that subjective bias is not becoming an issue to being used as a principal methodology.<sup>83</sup> Etherington believes that reflexivity will have different meanings depending on the person who is applying it as a method.<sup>84</sup> Wasserfall seeks to characterise the use of reflexivity by defining it as both ‘weak’ and ‘strong’. Weak use of reflexivity suggests an ongoing self-awareness which

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<sup>81</sup> Etherington (2004), p.227.

<sup>82</sup> Watt (2007), p.94.

<sup>83</sup> Etherington (2004), p.31.

<sup>84</sup> Ibid. p.21.

is not necessarily made evident by the researcher; rather it is used as a personal tool to monitor relationships between them and participants. Strong use, on the other hand, promotes 'the deconstruction of the authority of the author' which effectively removes the power difference between the researcher and the researched.<sup>85</sup> For myself, I felt my reflexive approach fell somewhere between the two, with a greater leaning towards strong reflexivity, because it was impossible for me to ignore the birth mother part of my identity that I shared with my participants. The fact that I was an academic researcher placed no bearing on hierarchy, there was no authority to deconstruct. I was an integral part of my research by default.

### **RECORDING THOUGHT PROCESSES: THE REFLEXIVE JOURNAL**

In relation to the absolute commitment towards making any potential biases visible, I was keen to reflect on my own research journey. I decided to keep a reflexive journal throughout the data collection. Etherington suggests that the researcher should use their journal entries to 'monitor their growth and develop their own internal supervisor'.<sup>86</sup> Janesick also encourages the keeping of a journal suggesting that 'the researcher owns up to his or her perspective on the study and will track its evolution by critical reflection of the entire research process'.<sup>87</sup> I began my own journal by recording my personal responses to the recruitment process and my interactions with participants<sup>88</sup> as an ongoing process. Watt suggests that the journal can potentially become a,

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<sup>85</sup> Wasserfall, R., *Reflexivity, Feminism and Difference*, in Hertz (1997), p.151-152.

<sup>86</sup> Ibid. p.127.

<sup>87</sup> Janesick, V, J., '*The choreography of qualitative research design: minuets, improvisation and crystallization*', in Denzin (2000), p.385.

<sup>88</sup> Etherington (2004) p.22.

‘personal narrative highlighting the value of reflexivity both during and after a study. It helps to demystify the research process and teaches one to reflect on their behaviour and thoughts as well as the phenomenon under study, it creates means for continually becoming a better researcher by catching the dynamic nature of the process’.<sup>89</sup>

This view is shared by Ellis who, in writing her own personal narrative, states that journal accounts must ‘candidly portray events and bring readers evocatively into what it felt like to go through the experience. This will mean revealing flaws, and bad decisions as well strengths and good judgments’<sup>90</sup> I did not perceive or appreciate the absolute value of the journal until I had completed the data collection and read it properly for the first time. Whilst I was immersed in data collection, the thoughts and feelings about the interactions that were recorded in my journal would have remained invisible. If I am completely candid, some of these thoughts leaned toward bias. Sometimes these predispositions towards bias were in response to authorities’ actions and at other times I found it difficult to empathise with my respondents when they appeared to only see their own side of a situation. These thoughts and feelings when recorded, provided a powerful and grounding means for self-reflection. It is, as Ellis says, ‘an honest account written from the heart as well as the head’.<sup>91</sup> This is not an easy concept in academic writing, but nevertheless I believe it is a vital component of insider research, insofar as there would be a significant risk of undisclosed bias without it. As Behar says ‘[reflexivity] has to be essential to the argument, not a decorative flourish, not exposure for its own sake’.<sup>92</sup> Behar’s view is highly persuasive; clearly a misuse of reflexivity poses a risk that the research will present as self-

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<sup>89</sup> Watt (2007), p.82.

<sup>90</sup> Ellis, C (1996), p.152.

<sup>91</sup> Ibid. p.157.

<sup>92</sup> Behar (1996), p.14.



indulgent and narcissistic<sup>93</sup> even if that was not the intention. To avoid this, it is sensible to reflect on the questions put forward by Etherington at regular intervals through the process: 'does this work make a substantive contribution to my understanding of social life? Do I demonstrate a grounded social science perspective and demonstrate how it is used to inform the text'?<sup>94</sup> If I could honestly answer yes to these questions then I am doing the right thing by my participants and by myself by being reflexive.

As Watt points out with her analysis of her reflexive journal 'writing these notes permit researchers to discover things in their heads that they did not know were there'.<sup>95</sup> By sharing these journal entries it is anticipated that, by reference to Watts again 'making such information available to the reader provides them with a means to better evaluate the finding and such openness makes analytical events open to the public'.<sup>96</sup> It is the keeping of the journal that Maxwell suggests allows subjectivity to become 'critical subjectivity'. This means that the researcher validates subjectivity by, 'such quality of awareness where primary experiences are not suppressed, yet we do not allow ourselves to be swept away and overwhelmed by something that is now part of the inquiry process'.<sup>97</sup> Quite the contrary, the journal provides a secure anchor point into which all those thoughts and feelings that should not be suppressed can be poured. Once the data collection was complete I read the journal. Initially it presented as no more than a confused jumble of outpourings which should never find their way into an academic thesis. However, on deeper, more critical contemplation of the reactive

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<sup>93</sup> Etherington (2004), p.31.

<sup>94</sup> Ibid. p.148.

<sup>95</sup> Watt (2007), p.83.

<sup>96</sup> Ibid. p.84.

<sup>97</sup> Maxwell, J. A., *Qualitative Research Design: An Interactive Approach*, (2012), p.45.

feelings and emotions that had been recorded, I found that it was possible to transform the entries through reflection into critical subjectivity which contributes something extremely valuable to the study.<sup>98</sup>

### **3.8. THE PILOT STUDY**

Gilbert notes that with qualitative research it is often impossible to determine at the beginning of a project what method of data collection will be the most effective.<sup>99</sup> Accordingly, the validity of the questionnaire was tested with a small pilot study. Bell advises the researcher to always carry out a pilot study to ascertain the effectiveness of the questions and 'get any bugs out of the instrument' so that the collected data proves usable.<sup>100</sup> Three birth mothers volunteered to complete the pilot questionnaire and a birth parent counsellor agreed to provide feedback on the substance of the questions and the overall design.<sup>101</sup> The results revealed some issues concerning the specifics of the questionnaire. The questions were open ended which allows for an exploration of a complex research area and 'permits the respondent to answer in their own terms'.<sup>102</sup> The questions were appropriate to the study's aims and they also gave opportunities for respondents to include further information. However, their answers were brief and did not produce the rich qualitative data which was expected.<sup>103</sup> The results felt too statistical with an overall quantitative character.

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<sup>98</sup> Mayer, J, D., Salovey, P., et al. 'Emotional Intelligence: Theory, Findings and Implications', (2004) 15(3) *Psychological Inquiry* 197 at p.197, <https://goo.gl/oXm63Y> (Accessed 25 August 2016).

<sup>99</sup> Gilbert (2008), p.60.

<sup>100</sup> Bell (2005), p.147-148.

<sup>101</sup> Ibid. Bell advises that the pilot questionnaire is tested on a group similar to the target population.

<sup>102</sup> Gilbert (2008), p.191.

<sup>103</sup> This is not an uncommon occurrence at the start of a qualitative study and researchers often feel 'dismay' at the lack of subjectivity in their data. Anderson, K., in

It was obvious the questions could not be made any more open as this would render them too ambiguous for participants and for analysis. Gilbert stresses that a negative result is not unusual because it may have been difficult to determine whether the original collection method was the correct one, and therefore a pilot study is so important.<sup>104</sup> He goes on to remind us that each stage of the research provides an opportunity to reformulate as we develop as researchers. He notes that 'this is ongoing intellectual work'.<sup>105</sup>

The subsequent task was to seek a more suitable method of data collection. Fortunately, qualitative research permits the use of 'naturalistic' and un-coded data.<sup>106</sup> This meant some middle ground could be achieved. The original research design was therefore able to be adapted to allow the data to be collected through a more unstructured approach.<sup>107</sup> Rather than disregard the questionnaire, which was vital to promote interest in the study, the decision was made to retain it along with a covering letter asking the participant if they would be willing to write their story in their own words. Alternatively, they were asked if they would participate in a semi-structured interview<sup>108</sup> based on the questionnaire format. Interviewing was an attractive option because no training or particular skills are needed other than interacting and listening and trying to understand the respondent's experience.<sup>109</sup> Further, interviews are suited to 'experience type research,

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Berger Gluck, S, Patai, D., (Eds), *Women's Words: The Feminist Practice of Oral History*, (1991), p.12.

<sup>104</sup> Gilbert (2008), p.60.

<sup>105</sup> Ibid.

<sup>106</sup> Braun (2013), p.33.

<sup>107</sup> Hodkinson, P., *Goth: Identity, Style and Subculture*, (2002), Hodkinson used a less structured ethnographic approach to collect data in his study of the goth music scene

<sup>108</sup> Braun (2013), p.78, semi-structured interviews are based upon a guide which the researcher follows but does not strictly adhere to it.

<sup>109</sup> Silverman, D., *Interpreting Qualitative Data*, (2006), p.112.

exploring understanding, conceptions and construction of issues which participants have a personal stake in'.<sup>110</sup> Whilst it is true that telephone interviewing is not used often because it lacks the helpful visual clues,<sup>111</sup> it has advantages. The first is that it is a low-cost method of having direct communication with participants, considering there was no budget to travel this seemed a sensible approach. The second advantage is the telephone provides greater anonymity for respondents than face-to-face interviews in sensitive research such as this.<sup>112</sup>

Feminist research is suited to semi and unstructured interviews. Reinharz explains 'the use of semi-structured interviews has become the principle means by which feminists have sought to achieve the active involvement of their respondents in the construction of data about their lives'.<sup>113</sup> Graham believes that this method allows the respondents to become 'actively involved in the construction of data about their lives'.<sup>114</sup> According to Oakley the feminist perspective rejects traditional masculine interviewing techniques where there is the avoidance of sensitivity and emotionality. Rather it embraces the traits of openness, emotional engagement and the development of trust within a non-hierarchical relationship.<sup>115</sup>

The intention to carry out interviews required consideration of issues such as power imbalance between researcher and participants or 'hierarchy' as it is known. This was addressed with reflexivity and an 'empathic' approach put

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<sup>110</sup> Ibid. p.81-82.

<sup>111</sup> Berg (2009), p.123.

<sup>112</sup> Ibid. p.122-123.

<sup>113</sup> Reinharz, S., *Feminist Methods in Social Research*, (1992), p.18.

<sup>114</sup> Graham quoted in Reinharz (1992), p.18.

<sup>115</sup> Oakley, A., 'Interviewing Women: A Contradiction in Terms', in Roberts, H, (Ed), *Doing Feminist Research*, (1981), pp. 30-61.

forward by Braun who warns of the care that must be taken when interviewing vulnerable people.<sup>116</sup> The role of the researcher is also the key consideration for feminists where there is a 'minimizing of status differences between interviewer and respondent and the development of an equal relationship based on trust.'<sup>117</sup> There is also the matter of participant distress, raising questions such as, what if they became upset during our interview? Braun suggests avoiding ending the interview because of this, but rather make attempts to manage the distress by acknowledging it and asking, 'are you alright, would you like to stop for a while?'<sup>118</sup> Berg suggests finding out what are the respondent's coping mechanisms before asking questions which may provoke distress.<sup>119</sup> This for being aware and mindful of what support the respondent has in place should they need it. I felt that the possibility of telephone interviews opened the study to allow a range of experiences that could be analysed in a similar way. It also allowed participants to choose the level of their contribution to the study. This type of data collection is known as 'mixed method'<sup>120</sup> data collection where it is feasible to use both questionnaire and interview data in the analysis.

### 3.9. RECRUITMENT OF TARGET POPULATION

In seeking a method of recruitment of birth mothers, the work of Dr John Clifton was the starting point. Clifton, a researcher in the field of social work, had completed a study of birth fathers' experiences of their children's adoption.<sup>121</sup> His

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<sup>116</sup> Braun (2013), p.89

<sup>117</sup> Reinharz, quoted in Punch (2005), p.173

<sup>118</sup> Braun (2013), p.89.

<sup>119</sup> Berg (2009), p.94.

<sup>120</sup> Gilbert (2008), p.131.

<sup>121</sup> Clifton, J., *Birth fathers and their adopted children: Fighting, withdrawing or connecting in Adoption and Fostering* 36 pp. 43-56 <https://goo.gl/rMZ4Fu> (Accessed 25 Aug 2016).

advice was to write to local authorities and non-government organisations asking them if they would be willing to make the study known to birth mothers. He suggested that becoming a known researcher in my chosen field would be the key to successful recruitment. I wondered if being 'unknown' would place obstacles in my recruitment efforts.

The target population was birth mothers, so the most appropriate sampling technique was purposive.<sup>122</sup> Purposive sampling allows a researcher to select participants based upon their own knowledge of the most suitable respondents.<sup>123</sup> The aim was to achieve detailed accounts of birth mothers' views and feelings about their children's adoptions. The intention was to recruit around 25 birth mothers whose children had been adopted since the ACA was passed. The other important recruitment condition was that there was no ongoing court case concerning their child because of the ethical implications. Clifton's recruitment method of seeking participants by contacting birth family counselling services seemed like a practical place to begin the search for birth mothers. Section 2(6)(a) ACA requires that local authorities provide adoption support services in the form of counselling and under Regulation 4 of the Adoption Support Services Regulations 2005 birth parents are entitled to counselling. The ethical requirement for protection from harm<sup>124</sup> was applicable to birth mothers. The study presented a risk that women who participated would experience distress by the questions which inquired into their feelings around adoption.

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<sup>122</sup> Berg (2009), p.50.

<sup>123</sup> David and Sutton (2011), pp. 232-233.

<sup>124</sup> Social Science research ethics holds the principle 'to do no harm' as fundamentally important, Berg (2009), p.60.

Approaching counselling services seemed an ethical approach because potential participants would have received some form of counselling where it would be anticipated that their feelings would have been explored. The first step was to utilise the Freedom of Information (FOI) request service under the Freedom of Information Act 2000.<sup>125</sup> Every local authority in England and Wales was contacted using their own FOI online forms or by email.<sup>126</sup> The requirement under the Act is that local authorities should respond to a request within 20 working days or should advise the enquirer that they require more time.

The results of the FOI requests were varied. Most local authority adoption teams have an independent birth parent counselling service. They usually have contracts with agencies or charitable organisations who provide such counselling. It is interesting to note that some of these services are principally adoption agencies providing counselling to birth families. Some local authorities also advised that 'in-house' social workers provided birth parent counselling. The provision of in-house counselling is an interesting finding which concurs with Mason and Selman's research which argued that local authority social workers' provisions of counselling was deterring birth parents from accepting it due to the fear that they would be indifferent to their needs. The theory behind birth parent counselling is that it should ideally be independent of the local authority adoption team. This is to ensure that parents feel that the adversarial process of losing their child to adoption by way of a local authority's intervention is not connected

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<sup>125</sup> Gov.UK, *How to Make a Freedom of Information Request*, (2014) <https://goo.gl/qf4Bo2> (Accessed 25 August 2016).

<sup>126</sup> Appendix: letter to local authorities' Freedom of Information Departments p.366.

in any way to therapeutic services they are offered. The BAAF's explanation reflects that point,

'The counselling may be provided by the local authority, but the guidance indicates that it will most often be appropriate for adoption support to birth parents to be provided by an individual or specialist agency independent of the local authority, especially if the child is to be placed for adoption against the wishes of a parent.'<sup>127</sup>

Upon receiving the FOI responses, emails were sent to the counselling services explaining why they were being contacted together with an attachment of an information sheet about the study aims.<sup>128</sup> The email asked if they would be willing to make the study known to birth mothers who were no longer involved in court proceedings. Some services made direct contact in response expressing interest in the study and requesting more information. Emails were responded to promptly with the information requested, however once a reply was emailed to the counselling services very few responded to the follow-up emails. Instead, emails began to arrive from local authority adoption team managers or adoption social workers who requested further information. This initially caused confusion because none of these individuals had been contacted directly. Upon further investigation it became apparent that all but two of the counselling services had passed on the study information to the local authority adoption team who their contract was with. It was thought that the independent nature of the counselling service meant they had the authority to agree to advertise the study if they felt it would benefit their clients.<sup>129</sup> This was the impression given from several counselling managers who replied to the initial emails. None had suggested that

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<sup>127</sup> Family Lives, *Adoption Support*, <https://goo.gl/ZMesNw> (Accessed 25 August 2016).

<sup>128</sup> Appendix: p.369.

<sup>129</sup> This was the view of John Clifton during our conversation.



they needed to seek the permission of a local authority gatekeeper<sup>130</sup> who provided birth mothers with their referral, but it appeared that most had done this. In my journal I recorded my personal responses to this apparent setback.

### **Reflexive Journal Entry: June 2015**

*'Twenty counselling services have replied to me directly, but I have also had enquiries from adoption team managers who I never contacted. I replied, giving a lot of information about my research. Some managers even went as far as arranging telephone calls with me to discuss my study. I duly waited for (an adoption team manager) 'Gill' to call. The first time she failed to call I assumed she was caught up with some important issue but the second time she didn't call I started to wonder if there was a problem with my method of inquiry. When more managers made initial contact then simply failed to follow up I took it personally (and negatively). Even though I had not disclosed my insider status to any of these people, maybe my 'real identity' is so transparent that professionals see through me, I am not a post-graduate researcher, I am a sad birth mother looking for evidence that my experiences were not unique. I was an imposter in a world of respected professionals, a spy, did they perceive that in my communication?'*

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<sup>130</sup> Gatekeepers are professionals or administrators who will be required to provide additional consent to access a certain group for social research and may be subject to their own ethical procedures, Gilbert (2008), p.152.

## CHALLENGES WITH RECRUITMENT OF PARTICIPANTS

Hoyle notes that gaining access to data through institutions 'presents the student with multifarious dilemmas'.<sup>131</sup> Hoyle's observation is clearly accurate because the method of recruitment and data collection seemed to be failing, except for two counselling agencies who had agreed to make the study known to birth mothers. There was still the opportunity to utilise another method of recruitment. This was to ask Non-Government Organisations (NGOs) who work with families and parents if they would publicise the study. The Family Rights Group, BAAF and Match Mothers<sup>132</sup> were willing to publish an advertisement for recruitment on their online forums, 'e-zines' and discussion boards which they confirmed were regularly accessed by birth parents.

To progress with confidence and optimism I felt I should attempt to challenge the negative assumptions recorded in my journal. I wanted to rationalise why local authority adoption teams had all behaved in much the same manner toward my attempts to recruit participants. I was fortunate to secure a meeting with 'Jan', a birth parent counsellor based in Plymouth with the charity Action for Children (AFC). At the time of writing AFC hold the 'birth parent counselling' contract with Plymouth City Council Adoption Team. Jan was previously a social worker for children and families, so she had good understanding of the different components of the adoption process. Jan was aware of my research because the Plymouth

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<sup>131</sup> Hoyle, C., 'Being a Nosey Bloody Cow': *Ethical and Methodological issues in researching domestic violence* in, King, R, D., Wincup, E., (Eds) *Doing Research on Crime and Justice*, (2000), p.201.

<sup>132</sup> Family Rights Group, Parent's Discussion Board, (May 11 2015), <https://goo.gl/t2V4tx> (Accessed 21 Dec 2017), Coram, BAAF, Adoption, (2017) <https://goo.gl/JXGEfh> (Accessed 21 June 2015), Match Mothers, *Online E-zine*, (August 2015), p.7 <https://goo.gl/9RM9Pz> (Accessed 8 August 2016).

adoption team manager had met with her to discuss my request to AFC for participants. The adoption team manager was concerned about my request and she had asked Jan's supervisor not to agree to help with my study until the adoption team had sought advice from the local authority's in house legal team. Jan held the view that the information sheet and questionnaire had triggered a defensive reaction in the adoption team manager. This defensiveness appeared to have originated from some of the questions being focused upon the issues of birth mothers' involvement in the adoption process and of post-adoption support. Jan suggested that this defensiveness was likely to have been shared by other adoption teams who had initially expressed interest then failed to follow up. Their silence led to my negative assumptions, but I felt Jan had made a valid point. It explained why adoption teams appeared to have closed their doors on me.

I decided to test Jan's defensive local authority theory further by contacting a researcher who was carrying out a similar study with the School of Psychology at Coventry University. Laura Monk<sup>133</sup> had published my advertisement for participants in the online magazine Match Mothers<sup>134</sup> of which she sits as Chair Person. Laura is studying the effects on mothers of separation from their children from care proceedings to custody battles between separated couples. As part of her research Laura held focus groups, to one of which she invited a social worker from the local authority children and families team to attend. Laura told me that it became apparent that the social worker was unhappy with the group dynamic. She accused Laura of being hostile and negative toward her and the social work team in general. Laura disputed any hostility towards the social worker. She later

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<sup>133</sup> Monk, L., *Mothers Apart Project*, <https://goo.gl/2VAgP8> (Accessed 21 Dec 2017).

<sup>134</sup> Match Mothers: *Mothers Apart from their Children*, (2015).  
<http://www.matchmothers.org/>, (Accessed 12 Dec 2017).

concluded that the social worker had arrived already defensive and expecting to be criticized. Laura said I should appreciate that the role of the adoption team is one based upon adversarial dealings with parents. Any academic research that appears to be focused on the difficulties faced by parents involved with such services will likely be met with suspicion and defensiveness. This is not an uncommon reaction within local authorities, in 2014 Hedley J was critical of adoption practice generally referring to social work practice as 'a highly defensive culture'<sup>135</sup> and it seems that this culture might also extend towards researchers.

From this experience a great deal had been learned about the way in which counselling services, although independent, were dependent upon the local authority providing them with a contract for birth parent counselling. Understandably the service would be reluctant to jeopardise formal agreements, especially those who were charities who relied on local authority funding. Then there was the in-house counselling offered to birth mothers by some local authorities. It was concerning that the guidance for 'independent counselling' appeared to be disregarded. It leads to the question of how birth mothers could engage therapeutically with a service who had initiated the adoption of their child. I know from experience that adoption team social workers, no matter how compassionate, are probably the last people in the world birth mothers would want to share their true feelings with.

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<sup>135</sup> Stevenson, L., Senior judge criticises 'highly defensive' social work culture ahead of ITV documentary, Community Care (14 July 2014) <https://goo.gl/KbTG7X> (Accessed 2 Sept 2016).

## EMPATHY WITH PARTICIPANTS

The reflexive approach would allow me to openly emphasise with my participants, but I realised that as a researcher I could not identify with my participant's experiences of being interviewed. According to Reiner 'the researcher's relationship with the individuals being studied requires a reflexive awareness of how the subjects' perceptions of the researcher can alter the material'.<sup>136</sup> I therefore wondered if I could gain some insight as a participant, to study my own perceptions of a different researcher. I discovered research being carried out by Siobhan Leigh-Hunt from Brunel University.<sup>137</sup> She was recruiting women who had been separated from their children and the psychological effects of this process. I decided to participate in this study, primarily so that I could adopt the role of a participant. I had purposely only glanced at the study information sheet because I wanted to avoid intellectualising the study as a researcher. I wanted to participate as a mother who had been separated from her children. Siobhan's methodological approach was a semi-structured recorded interview. She asked me to tell her my story and she occasionally asked questions or for clarification of something I had said. The interview began routinely; I spoke openly of the events that led up to the separation from my children. An hour into the interview I recounted the most traumatic parts of the ordeal. I was surprised to find that I became distressed and tearful and I struggled to articulate the events because of the surge of grief I was reliving. I took some time away from the room to get some fresh air and wait for the emotional reaction to pass. Once I felt calm I continued with the interview. Later I reflected on my feelings during my interview. Despite

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<sup>136</sup> Reiner, R., *Police Research*, in, King (2000), p.215.

<sup>137</sup> Siobhan Leigh Hunt, Research Information Sheet.  
<http://brunel.academia.edu/SiobhanLeighHunt>.

the years that had passed and notwithstanding my belief that I was 'over' the trauma, I had found myself behaving regressively and desperately wanting Siobhan to believe my side of the story. I feared she was judging me and would assume I was telling, 'my version of events' that could not possibly be accurate. I struggled with these negative feelings for several days. I re-immersed myself in the reinforced stigma that I had recreated around my participation. Taking part in Siobhan's study was a valuable lesson about my future participants, who may relive such trauma when they spoke to me. I needed to be mindful that participants in the same situation may experience a resurgence of pain and grief from talking to me. They, like I once was, were vulnerable, and many would carry deep emotional scars. They would need gentle handling.

The vulnerability of marginalised groups of informants raises ethical issues which are subtle and subsequently may be overlooked. For example, there must be careful consideration of the narrators' complex relationships with regimes of power. In this research this would be primarily local authorities and the courts, and how this in turn may impact on the interview.<sup>138</sup> Because of my insider status I was hopeful that I possessed a genuine empathic stance due to my own experiences with regimes of power. Hamilton argues that empathy with the interview subject is important in feminist research and it is expected that this empathic position should 'identify with the subject's pain and suffering'.<sup>139</sup> This position resonated with me through my own personal experience. Additionally, my participation in Siobhan Leigh Hunt's study allowed me to empathise to some degree with birth mothers' role as interviewee, sharing painful and traumatic

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<sup>138</sup> Hamilton, C 'On Being a Good Interviewer: Empathy, Ethics, and the Politics of Oral History' (2008) 36:2 *Oral History* 36 at p.36.

<sup>139</sup> Ibid.

memories with a relative stranger whose approval I craved and whose judgment I feared.

This links to the fact that there are sometimes complex empathic feelings experienced by an interviewer which should be reflexively addressed to ensure reliability of the resulting data. My interactions with birth mothers as interviewees will not always be impassive and comfortable. They may not answer questions in a clear and direct manner, they may be ambiguous and nebulous. In research such as this it should be expected that some participants will be challenging and testing to work with. In these situations, there is the risk that empathic feelings will not always flow from 'love and compassion'.<sup>140</sup> Where participants have contributed to the suffering of others, 'empathy' may be felt by the interviewer as negative emotions. This may create what Hamilton terms as a 'hostile empathic environment'.<sup>141</sup> Participants may share stories of ill-treatment and neglect of their children, they may also be hostile towards me. Hamilton asserts that a researcher who 'owns up' to her negative feelings<sup>142</sup> towards the narrators allows the interview to propel forward.<sup>143</sup> It is however crucial to reserve judgment of participants however challenging they may be. But to deny negative and 'hostile' feelings is not conducive to the overall reflexive approach. It is, as Hamilton points out, better to have a hostile environment than an indifferent one'.<sup>144</sup>

### **3.10. DATA COLLECTION**

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<sup>140</sup> Ibid. p.37.

<sup>141</sup> Ibid.

<sup>142</sup> In the reflexive journal.

<sup>143</sup> Ibid. p.37.

<sup>144</sup> Ibid. p.37.

Gradually enquires were being made directly from birth mothers who had visited the online forums and had responded to the advertisement. The enquiries were primarily made by email, but some were made by text message or telephone call. The person was thanked for their enquiry and sent an information sheet, a consent form and a questionnaire in the form they had requested either by email or posted as a hard copy. It was at this stage that I took the step of disclosing my position as a birth mother to potential participants in the detailed information sheet.<sup>145</sup> I had struggled with uncertainty about this decision for some time. Through reflection I felt something was unethical about non-disclosure. Feminist methodology advocates a high level of openness between researcher and respondent which has the expectation of some level of self-disclosure.<sup>146</sup> Braun and Clarke argue that 'personal disclosure can encourage people to participate in your research'.<sup>147</sup> Similarly Jenkins argues 'there are choices with insider status, we can remain silent and objective or we can disclose our position and be subjective, openly express empathy, and encourage authentic and intimate dialogue with participants'.<sup>148</sup> The potential value to the study was I felt a risk worth taking. I was mindful that sharing my identity with birth mothers may work in the opposite way and discourage them, but I included a short sentence about my own position. Fortunately, this did not appear to deter participants. In a short time, a large number of potential participants made contact. Along with requests for interviews I received emails with attachments from women with their stories and experiences written in their own words. Many commented positively upon my

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<sup>145</sup> Appendix pp.370-373.

<sup>146</sup> Punch (2005), p.173.

<sup>147</sup> Braun (2013), p.93.

<sup>148</sup> Jenkins (2013), p.374.



disclosure. I was a birth mother who was studying other birth mothers. One participant commented when she offered to tell me her story 'how could I not [take part] you are one of us'.<sup>149</sup> Indeed Sara Evans believes that a great rapport can be achieved between researcher and researched where personal experience is common because we can 'comprehend what they have to say in a way that no 'outsider' could'.<sup>150</sup>

During email exchanges and conversations with birth mothers I became aware of the dynamics that were forming between myself and each participant. I realised that there was an unspoken understanding in some of the dialogue between us. I felt protective of them because they trusted me with intimate and personal details which, according to Reinharz, is not unusual because women tend to trust an interviewer who they know would not discuss their stories with anyone else and thus they felt able to talk freely.<sup>151</sup> Unlike Jenkin's use of reflexivity as a method of explicitly sharing his own experiences with his participants, I did not incorporate a detailed level of disclosure into my conversations. I could see the value of this two-way approach in some research, but I perceptively felt that sharing details of my life beyond that of being a birth mother myself would be taking involvement a step too far and risked my over-immersion with participants.<sup>152</sup> Jenkin's participants clearly benefitted from this 'sharing of stories',<sup>153</sup> but I felt my own would not. I did not wish to risk undermining the importance of their stories by telling my own. During these periods my reflexive

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<sup>149</sup> Karen BM11.

<sup>150</sup> Reinharz (1992), p.27.

<sup>151</sup> Ibid. p.26-27.

<sup>152</sup> It is important to maintain a separate identity from participants to avoid the position of losing the researcher identity completely, Hall, T 'At Home with the Young homeless' (2000) 3:2 *International Journal of Social Research Methodology* 121 at p. 133.

<sup>153</sup> Jenkins (2013), p.374.

journal became an essential part of the research process by allowing me to write about my thoughts so that the interaction with respondents was transparent. Journals and diaries are usually written with the honesty of something that will only ever be read by the author. Personal writing for research differs to that, it is best defined by DeVault who explains that 'personal writing is most often designed to appear immediate and confessional, it speaks to readers with an individual voice that claims something like 'here is my truth, complete and unvarnished'.<sup>154</sup>

## **THE CHALLENGES OF DATA COLLECTION: THE REFLEXIVE JOURNAL**

### **Journal Entry: July 2015**

*Three questionnaires came today. I can't open them, and I don't really want to read them. I am reminding myself that this insider knowledge and the prejudices I developed during my own experiences must always be put to one side or kept separate. The stories are painful to read. I feel guilty, it feels wrong to have them in my possession. I feel as though by reading them I am a voyeur to these women's secrets. I know they have sent me this information willingly, but I feel responsible for their stories. The information has been sent to me on the assumption that I will take care with it, not misuse it. It's not data to them, it's their lives. Ethical responsibility is not just a paragraph in the post grad handbook anymore, I can see how easily vulnerable people can be exploited.*

### **July 2015**

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<sup>154</sup> DeVault in Hertz (1997), p.221.

*I spent the weekend reading their accounts of adoption. I am worried that I am opening up their old wounds. Some have said they don't want to fill out the questionnaire, K said it's too impersonal; they want to tell me what happened. Last night I followed up a questionnaire with a phone interview, BM answered my questions, but she sounded empty and emotionless. She told me her partner had hurt her child. I really related to her emptiness, that feeling of being dead inside, or frozen. I'm angry at myself because I can't do anything to change her situation. Is that what I thought when I started this, that I could become super-woman and solve their problems? I have to stop myself from saying 'come down, let's have a coffee and'....what? Let me take away your pain? You're supposed to ask them questions not be their counsellor.*

## **August 2015**

*What if my feelings are contaminating my interpretations of their stories? If S isn't angry about the way she was denied the right to get a new solicitor, then it isn't inappropriate for me to feel angry on her behalf? but I have, and I do. The same with grief, what if I am finding it harder to separate their sadness and regret from my own. What if the findings are tainted with my own anger and sadness, will that invalidate the whole thing?*

*I interviewed J yesterday, she did not even realise her son had been adopted until 2 years later. I took pages of notes because she didn't want to be recorded, after the interview the transcript was just a mess of words with me trying to get it clear in my head, what if I missed something she*

*said that was really important. I got up at 4am and copied the notes out neatly. I felt back in control, but later on S sent a message by text asking me about my study. I emailed her the information sheet. She replied, 'what's the point of this, it won't help me get my kids back'. She has a point, I am starting to wonder if there is any point in doing this when it only seems to cause stress to them and to me.*

The text message from S led me to reflect on what could actually be gained from this research. I asked myself 'why would a birth mother care enough to want to take part, what is in it for them?' When I recruit them as participants, what assurances can I give to them that this study is worthwhile? Steier suggests that a reflexive approach allows the research to become a reciprocal process in which the voices of respondents are enhanced rather than lessened.<sup>155</sup> Steier's argument is persuasive but is it enough to tell the birth mothers that their voices matter. All that can be promised is that they can raise awareness, or maybe even be the catalyst for change in how future birth mothers experience the adoption process.

## **THE REACTIONS OF THE INTERVIEWEES AND THE EFFECT ON THE INTERVIEW PROCESS**

All of the interviewees had access to the questions prior to their interview, either on a copy of the questionnaire or on a draft list of questions. Apart from one birth mother who wished to be interviewed the first time she made contact, the participants and I had spoken or had communicated by email several times before I interviewed them. Despite these prerequisites, it was not possible to gauge how

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<sup>155</sup> Steier, F., *Research and Reflexivity*, (1991), p.7.

birth mothers would react to my questioning during the interviews. It transpired that participants' reactions varied significantly. Some women barely reacted and spoke without inflection and with no discernible emotion. They answered questions only about the adoption of their child without providing context about their own lives and the other people involved. Their responses seemed isolated and although these interviews were the easiest to conduct in terms of gathering data, there was a sense of 'holding back' on the part of the participants, of important things left unsaid, possibly things with an intense emotional component.

Some other birth mothers practiced subtle avoidance of answering certain questions by, for example, talking about an experience that was not directly related to the question I had asked. I felt this was probably due to the painful nature of the questions. I addressed this by steering the participant back towards the question or, if it felt untenable, leaving that question unanswered. A significant number of birth mothers reacted openly and candidly to the questions. They talked at length about other people in their lives and gave vivid depictions of their adopted children, conveying them into the interview as real people instead of one dimensional figures. There were strong feelings projected, often sadness and anger, but also frustration and guilt were prevalent. These birth mothers were unapologetic about their true feelings and their deep love for their children. I was regularly caught up and involved in their narratives, sometimes forgetting to make notes. These were the interviews which sometimes became difficult for me to detach from emotionally. These very different reactions created an unpredictable and diverse effect on the interview process. Some respondents told me that following the interviews they felt distressed and sad for some time afterwards

whilst others found the process therapeutic telling me they had 'let go of so much pain talking to you'.<sup>156</sup>

Literature on qualitative research advises new researchers to be open minded and flexible when working with real people; there is no set agenda for the kinds of unforeseen issues that may arise. As Saldana notes 'there will always be subtle, unsolvable dilemmas when we work with human participants because of their idiosyncratic natures'.<sup>157</sup> He goes on to suggest a 'heightened attunement' is needed during all stages of the study to ensure minimal discomfort to participants. This is where the need for engagement with challenges from interviewers becomes crucial to ensure openness and transparency. As Hamilton did in her own research,<sup>158</sup> I recorded these dilemmas in my journal.

### **Reflexive Journal Entry: August 2015**

*I had a call from lady who wanted advice on appealing her child's adoption despite me telling her that I can't be involved. What worries me is that she is advising other parents who are going through adoption proceedings, telling them to join Facebook crusades which name social workers and children. I tried to be tactful, but I felt out of my depth. I explained that ethically I was unable to advise her, and neither was I qualified to do so. She was angry at me and shouted down the phone at me that I was unethical by 'being ignorant and ignoring the truth'.*

This lady's anger down the phone made a profound impression on me. I was at the same time angry, distressed and guilty. The sense of responsibility towards

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<sup>156</sup> Cece BM5

<sup>157</sup> Saldana, J., *The Fundamentals of Qualitative Research*, (2011), p.24.

<sup>158</sup> Hamilton (2008)

people who made contact regarding research that I publicly promoted was immense. Regardless of whether these individuals participated, their input clearly demonstrated beyond any theory, the genuine disempowerment suffered by individuals who experience adoption.

### **3.11. THE INTERVIEW PROCESS**

Between June and November 2015, 53 women enquired and potentially agreed to participate. Data was obtained from 42 of those participants, all who represented the purposive sample of birth mothers. Eight participants completed the questionnaire and wrote more about their experiences on separate sheets which were attached to the questionnaires. A further seven participants wrote their stories but chose not to complete the questionnaire. Twenty-five participants completed the questionnaire and agreed that I could interview them by telephone. I undertook 23 telephone semi-structured interviews where I telephoned the participant at a pre-arranged time following an 'ice breaking' initial telephone call<sup>159</sup> or in some cases several phone calls. I also undertook four interviews with 'Skype'. The use of Skype is becoming an accepted method of data collection, particularly where distance between parties is an issue. There are ethical issues around Skype because the company state in their user agreement that they may retain conversations held over their service.<sup>160</sup> In these four cases the request to use Skype came from the participants and I ensured they were fully aware of these issues before we commenced the interview. All the participants also had an opportunity to talk to me about any issues they felt were important. This

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<sup>159</sup> Berg (2009) p122.

<sup>160</sup> Sullivan, J, R., 'Skype: An Appropriate Method of Data Collection for Qualitative Interviews?', (2012) 6(1) The Hilltop Review, Western Michigan University at p.59 <https://goo.gl/pSyMeG> (Accessed 3 September 2016).

method, known as unstructured or focused interviewing,<sup>161</sup> did mean I was sometimes on the telephone for long periods listening whilst the participant talked about all kinds of issues and I had to keep steering the conversation back to the purpose of the interview. I also occasionally became so involved with the story being told to me that I forgot to ask the questions. This is not unusual in unstructured interviews and Reinharz argues that such oversights can actually create a 'valuable reflection of reality'.<sup>162</sup> This approach eventually resulted in a large amount of valuable data which was relevant to the overall research questions. In total usable data was collected from 42 birth mothers. Paper or hard copy data was stored in a locked cabinet, within locked office, accessed only by researcher. Electronic data was stored on a password protected word document known only by researcher. Following the transcribing and analysis process the data will be retained for 3 years then will be disposed of securely.<sup>163</sup>

The flexible, semi-structured approach to interviewing appeared to be effective because once participants had made initial contact and they seemed to find it easier to talk openly. The urge to tell their stories flowed as a natural progression;

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<sup>161</sup> Gilbert (2008), p.247.

<sup>162</sup> Reinharz (1992), p.19.

<sup>163</sup> In collecting and using data the researcher must comply with the Data Protection Act. The Act is based on eight principles. Compliance with the principles will ensure information is collected and used fairly, stored safely and not disclosed to any person unlawfully. The principles are that data will be:

1. Obtained and processed fairly and lawfully
2. Obtained for a specified purpose and not processed in any manner incompatible with that purpose
3. Adequate, relevant and not excessive
4. Accurate and kept up to date
5. Not kept for longer than is necessary
6. Processed with due regard to data subject's rights
7. Kept safe from unauthorised access, accidental loss or damage
8. Not transferred to a country outside the European Economic Area, unless that country has equivalent levels of protection for personal data.



or as one birth mother explained 'I want to talk to someone who won't judge me, to get it off my chest'.

Qualitative studies can create unexpected results such as potential ongoing relationships with participants. Jenkins states that where reflexive research is concerned, closer relationships often form as a consequence.<sup>164</sup> Two respondents, Nicky and Urith<sup>165</sup> had both experienced adoption some years previously. Before I agreed to remain in contact with them I consulted my supervisor. We agreed that I should seek further ethical approval which I did, and this was approved. Jenkins warns against the potential difficulties of remaining in touch with participants. He stresses the importance of remaining professional at all times, whilst providing an appropriate level of support.<sup>166</sup> Bell also advises caution when continuing contact following an interview 'until a trust relationship has developed between researcher and story teller, it is unlikely that any intimate information will be shared, however, such personal involvement involves risks and particular ethical issues'.<sup>167</sup> Nicky and Urith were speaking about matters connected to their children's adoptions. I interpreted that they were seeking my support because I was not emotionally involved with them. I was clear with them that I could not become personally involved and neither could I advise them on any matter. I also advised them that I would need their additional consent if I were to use any information they provided. They agreed and provided further consent. I assured them that I would not use information they had shared without first verifying with them that they were happy for me to do so.

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<sup>164</sup> Jenkins (2013), p.376.

<sup>165</sup> Nicky and Urith are alias names.

<sup>166</sup> Jenkins (2013), p.376.

<sup>167</sup> Bell (2005), p.22.

Nicky had recently discovered that her daughter had been placed with adopters in close proximity to her home. Nicky was in the process of making a formal complaint to the local authority for knowingly placing her daughter so close to her and taking the risk that an accidental meeting would occur. The subsequent data I collected was based upon Nicky's feelings around her discovery and her dealings with the local authority.

Nicky kept in touch with me by email and phone for eight weeks. During that time a strong rapport developed. After two months I felt that it was the right time to conclude having contact with her. Winding down the relationship was difficult, and I contemplated the best way to do this. I eventually telephoned Nicky and explained that the part of my research where I collected data was at an end and that it was a good time to stop communicating with each other. It was not easy to do. I felt like I was abandoning her. Nicky made some further attempts to contact me with requests to meet, which often occurs where relationships with participants are ongoing.<sup>168</sup> I felt uncomfortable when I responded with brevity but eventually Nicky stopped contacting me directly. She has since sent me some copies of responses from the local authority concerning her complaint which I have acknowledged, but I am left with the feeling of regret that I let Nicky down in some way.

The ongoing contact with Urith was easier to manage. Urith's son had been adopted in 2005. Circumstances had arisen where Urith's son (now aged 16) had sought his mother out and eventually contacted her. A court case had resulted in an agreement that it was in her son's best interests to have direct contact with

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<sup>168</sup> Jenkins (2013), p.377.

Urith. This contact had not yet occurred when Urith participated in the study. Urith was required to undertake a mental health assessment prior to contact with her son. Whilst this process was ongoing Urith contacted me to share her fear and anticipation about meeting her son for the first time after ten years. This was valuable data which clearly illustrated the difficulties faced by birth mothers some years after adoption, when her child has chosen to contact her. Urith sent me a text message to tell me that her mental health assessment was positive and that the next day she was seeing her son. I expected to hear from Urith about how this first meeting went, but she never contacted me again. I admittedly felt rejected, but I had met a need for Urith as someone to share her feelings with and that need had ended. I do not know what happened at the meeting with her son and I probably never will; but I have learned that this is just one aspect of being a researcher. Sometimes we must accept uncertainty as part of our role. Maintaining an ongoing dialogue with participants can be a precarious ethical issue, therefore it is of major importance to 'self-examine' and keep relationships with participants transparent so that any conclusions reached are open and honestly disseminated.<sup>169</sup> Daphne Patai reflects on the ethical issues surrounding promising to stay in touch with participants,

'How many people can a researcher, however feminist, however sincere, consistently communicate? For how long? On what basis should we choose among our participants? Thus, even with simple matters such as keeping one's word, not to mention the larger issues arising from structural inequalities that the researcher can in no way lessen, problems of power and betrayal expose the fragility of easy assumptions of sisterhood'.<sup>170</sup>

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<sup>169</sup> Davis, C, A., *Reflexive Ethnography*, (2008), p.94.

<sup>170</sup> Patai, D., *U.S. Academics and Third World Women: Is Ethical Research Possible?*, in, Berger Gluck (1991), p.149.

With this in mind the inexperienced researcher must tread extremely carefully when agreeing or promising to stay in touch, even at the expense of losing valuable data. This is a necessity to avoid the risk of work becoming unethical.

### **3.12. VALIDITY AND RELIABILITY: TYPOLOGY OF PARTICIPANTS**

Qualitative research demands validity and reliability as equally as quantitative research does. Validity requires one to consider how effective the data is at representing the events or the phenomena for which they stand. Validity can be divided into two categories: internal and external. Internal validity concerns the research design of the study and the question of whether it is truly reflective of the truth of the research. External validity concerns how the findings of the research are representative of the topic and whether they can be conveyed to other situations.<sup>171</sup> Reliability means that accounts in the data must be consistent from one measurement to the next.<sup>172</sup> Ensuring validity and reliability in a study such as this one presents challenges because it depends upon information provided by participants. One method of ensuring that the data collected from birth mothers was valid and reliable was to look for common themes in the information participants were providing, and asking the question, were there certain types of participants generating similar data?

In social science 'typology' is 'the study, or analysis, or classification based on types or categories'.<sup>173</sup> Berg defines it as 'a systematic method for classifying similar phenomena into discrete groups which allows one to see various

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<sup>171</sup> Punch (2005), p.29.

<sup>172</sup> Ibid.

<sup>173</sup> Meriam Webster's Learners Dictionary <https://goo.gl/edR9zq> (Accessed 12 August 2016).

distinctions between people'.<sup>174</sup> Several weeks were spent reviewing and analysing the collected data. Additional evidence was also examined such as initial contact emails and anecdotal materials. Following analysis, the participants could be relatively separated into three categories. These categories were influenced by my own understanding of birth mothers, but primarily from the way in which participants responded to questions and from the content of their answers. This approach according to Berg, allows one to 'make theoretically meaningful appraisals'.<sup>175</sup> These three categories were then coded as: The Help Seekers, the Activists and the Reflectors. It was the third category, the Reflectors, whose data was deemed as the most valid and reliable, but it is helpful to give an overview of all three, because as Berg notes 'the goal of typologies is to provide additional understanding of the material collected in the course of the research'.<sup>176</sup>

## **THE HELP SEEKERS**

The 'Help Seekers' were birth mothers who had experienced the adoption of their child between six months and two years ago. Despite the recruitment information sheet stating that it was not possible to involve participants where placement for adoption proceedings were ongoing, several Help-Seekers were still attending court. It was evident from their dialogue that they had contacted me not with the objective of participating in a study on adoption, but with the hope that I may be able to help them change the decision to adopt their child or at the very least provide them with legal advice. This is not unusual in social science research. Ann Oakley notes the dilemma faced by researchers when participants shift the

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<sup>174</sup> Berg (2009), pp.230-231.

<sup>175</sup> Ibid.

<sup>176</sup> Ibid. p.232.

focus from responding to questions to asking for personal advice.<sup>177</sup> Annie, who participated in a telephone interview, is a good example of a Help Seeker typology. Shortly after the interview commenced she admitted that the adoption of her child had only concluded the previous week, saying,

‘I hope something [good] can come from me contacting you, you must have a lot of experience helping women in my situation. You are my last hope really, I need your advice, I may be able to get an appeal.’<sup>178</sup>

Annie’s intentions were transparent, but not all women were so forthright. I found there were subtle signs and it was often their high level of vulnerability that was apparent or a desperate hurriedness to put their story across to me before admitting they wanted help or advice. The Help Seeker’s data is not included in the analysis for two reasons: the first being that using data from women who were looking for some form of legal help would be unethical; and the second being that the requests for help, whether obvious or obscure, appeared very much like a condition of participation in the study. This was an interesting aspect of this typology, all of the women inferred that they were willing to ‘trade’ their stories if I could help them in some way, which is precisely what Jenkins experienced with some of his participants.<sup>179</sup> This could be argued as demonstrative of the desperation experienced by birth mothers and how easily they could be exploited with false promises of help as a bargain. The data which these women provided will therefore not be included; but could potentially give rise to further research.

## **THE ACTIVISTS**

The second typology were identified as ‘Activists’. These were women who had experienced adoption at various times over the previous decade. They were

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<sup>177</sup> Oakley in Roberts (1981), pp.30-61.

<sup>178</sup> Excerpt from interview with Annie (September 2015).

<sup>179</sup> Jenkins (2013), p.379.

typified by their narratives and by their attitude towards me as a researcher. Anger and over assertiveness were common reactions to questions which were answered with lengthy and detailed narratives naming every party involved and giving exact places, dates and times where events occurred. These women had, at some point, been involved with the police or the courts following the adoption. They were on personal crusades to overthrow injustice and fight the legal system. Sometimes, because they had published the names of their children, social workers or other professionals involved in their case on social media, they had been served with Prohibitory injunctions, whilst others had been convicted of harassment of professionals or of foster carers. One respondent had recently been released from prison for an assault occasioning actual bodily harm which involved throwing a water glass at a local authority appointed barrister in court. She sent me her prison release papers to prove this happened. These birth mothers were outspoken and confident when contacting me. They identified me as a spokesperson for the injustice they had suffered. They seemed to infer I was a birth mother researching the 'system' therefore I must be an activist. Some named various high-profile individuals who they maintained supported their cause for preventing forced adoption.

In a telephone conversation, the respondent Lynne revealed details of such a situation,

'Judge X and the MP XX, do you know him? They have agreed to sign my petition against my kid's adoption, MP said that he may be able to get the decision to adopt my kid reviewed cause (sic) he don't believe in forced adoption either. Have you seen I's website? He helps mums who had their kids stolen by the SS, there's a chance he might be able to get me and C to France, then they can't touch us'<sup>180</sup>

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<sup>180</sup> Excerpt from interview with Lynne, June 2015.

Some of these birth mothers had set up public social media accounts and were advising other families on the methods of 'fighting the system'. The data provided by Activists was not included in the analysis for three reasons: The first being that they were participating because they saw my research as a forum for their cause. None of the women wanted to remain anonymous but insisted upon their names being used to raise their profiles, which was not ethically possible. Secondly, they saw me as a proxy for their fight against the legal system which I suspected would involve using my name publicly. This is a type of researcher/researched relationship which is an ethical pitfall, described by Silverman as 'participating in dubious bargains'.<sup>181</sup> The third reason came from my own personal understanding of Activists. The behaviour of these women may have been a coping mechanism for the unexpressed deep hurt and grief they were experiencing. Sometimes it is impossible to let go, and to fight the system which had removed their children was the only way they could envisage making progress. To not fight might well have felt like they were giving up on their children. Women in this situation who find they are being punished, sometimes by the criminal courts, or with civil actions, may also find their direct or 'letterbox' contact with their children is stopped. They may also refuse counselling because they lack the insight required to deal with their loss. The data created by Activists lacked validity because, like the Help-Seekers, their motives for participation were to draw attention to their own causes, and that was not an objective of the thesis.

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<sup>181</sup> Silverman (2006), p.317.



## **THE REFLECTORS**

The third typology is the 'Reflectors' and it is believed that these represent the most reliable participants which in turn creates valid data. These women experienced adoption more than three years ago. Crucially for the aim of the research, all the women were clear about their reasons for participation. They had read and understood the recruitment information. The call for participants had compelled them to want to tell their stories and they were speaking to try and raise awareness of adoption practice and sometimes how unfairly they felt they were treated. They had, to some degree, adjusted following the adoption, and some had given birth to subsequent children and had settled lives. Most were able to identify and reflect on events which were pertinent to local authorities intervening in their families. Interestingly despite displaying maturity and insight, most of the women concurred that they felt adoption had been focused on too soon, they had received little or no help in keeping their children and many felt the adoption process was forced and compulsory with no opportunity for their case to be fairly heard.

Once the data from the Reflectors was collated and separated from the other typologies, the strength of the narratives reinforced that the right decision had been made to ensure the results were valid and not skewed by unsuitable motives. This approach also guaranteed that the research remained ethically sound because the only respondents involved were those who had provided informed consent and were clear on their reasons for participation.

### **3.13. THE VALIDITY OF SUBJECTIVE RESEARCH: APPROACHES TO INTERVIEWING BIRTH MOTHERS**

Collecting data from interviews means that the words of participants form the results for analysis. Consequently, this data is highly subjective, it can only be measured for its accuracy insofar as is possible to do so from the perspectives of those who take part. Thody argues that subjectivity in qualitative research is unavoidable because it presents the story of the opinion maker.<sup>182</sup> Whether this presents as a limitation that affects validity is a debatable point. Goffman's view is that social science interactions will always involve deception and scepticism because of the human tendency to present 'a front'.<sup>183</sup> Alternatively, a feminist approach argues that by listening, respecting and believing our interviewees a trusting relationship develops and thus respondents feel safe enough to disclose the unfettered truth.<sup>184</sup> Similarly, Braun and Clarke argue that 'qualitative data are seen to be produced in particular contexts, by participants, who come from and are located within specific contexts'.<sup>185</sup> They go on to say that subjectivity will reflect the researcher's experiences and the context we have seen and understood. If this context creates the potential for bias, then this bias will not be denied or eliminated but rather contextually included in the analysis.<sup>186</sup>

Despite having a subjective stance, this thesis makes an original contribution to knowledge in respect of birth mothers and their experiences of state intervention into their families and the subsequent adoption of their children. It is original research because it has gone further than simply interpreting the views of professional bodies and text based legal theory. Trying to disseminate the real

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<sup>182</sup> Thody, A., *Writing and Presenting Research*, (2006), p.148.

<sup>183</sup> Goffman, E., *The Presentation of Self in Everyday Life*, (1990), p.4-6.

<sup>184</sup> Reinharz (1992), p.28.

<sup>185</sup> Braun (2013), p.21.

<sup>186</sup> *Ibid.* The use of reflexivity and the issue of bias has been discussed in the methodology, See chapter three p.146.

lives of individuals through such limited means can prove unauthentic because, as Allen notes 'the law does not and cannot convey the reality of the adoption process';<sup>187</sup> perhaps research which presents the views of those directly affected by the law can go some way to achieve that objective and provide insight into the impact of both the law and its implementation on the lives of those subject to it.

The interview process began with asking participants essential questions<sup>188</sup> which concerned the key focus of the research. Intertwined with questions on the legal processes, were enquiries into respondents' social circumstances before and during adoption proceedings. They were also asked whether they held any views about stigmatizing. The character of the questions was influenced by literature on women's studies, the key philosophy of which necessitates that questions be understandable and comprehensive so that they are answerable by all participants including those may not be confidently articulate. The is to ensure that respondents do not feel confused or intimidated by complicated or ambiguous questioning.<sup>189</sup> The purpose of the interviews was to ascertain respondents' personal views and feelings of their experiences. Anderson stresses that the method to meet this objective is simple 'if we want to know how women feel about their lives, then we have to allow them to talk about their feelings'.<sup>190</sup> Silverman points out the importance of a collaborative process; 'the interviewee is not a passive vessel waiting to be tapped'.<sup>191</sup> Field Belenky et al

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<sup>187</sup> Allen (2007), p.13.

<sup>188</sup> Berg, (2009), p.113.

<sup>189</sup> Field Belenky M, McVicker et al., *Women's Ways of Knowing: The Development of Self, Voice and Mind*, (1986), p.11.

<sup>190</sup> Anderson, K, Jack, D, C., *Learning to Listen: Interview Techniques and Analyses*, in, Berger-Gluck, S, Patai, D., (Eds), *Women's Words: The Feminist Practice of Oral History*, (1991), p.15.

<sup>191</sup> Silverman (2006) p.112.

suggest telling participants that as interviewers we are interested in their experience and their point of view because it has so often been excluded.<sup>192</sup> Mindfulness of these suggestions facilitated meaningful dialogue in most cases. In a number of cases however, the initial interview did not yield results because respondents were not forthcoming with information. I felt that this was pertinent to them mistrusting me with personal information, coupled with the fear of being judged. This is a common occurrence to be expected in interviews of this kind. Grey notes that a trusting relationship needs to develop before personal information is willingly shared.<sup>193</sup> Alert to this, I persevered with respondents. Sometimes several calls were necessary before they felt comfortable with answering questions and often a significant amount of time was spent in conversation where questions were answered but the answers were difficult to unpick from the additional dialogue. Although a relatively unstructured approach was legitimate to the study's aims, a plan substantiated in legal method was required with which to create the questions. This was vital so there would be some measurable results which could be processed within the scope of the law and thus provide legitimate legal analysis of the qualitative data.

The questions were designed to be open ended. Silverman believes that a study's authenticity is more pertinent to open ended questions than it is to sample size,<sup>194</sup> which is useful to consider where the sample size is small. The questions were designed with the view to obtain accounts of how birth mothers experienced the process of adoption. However, having learned lessons from the pilot study,<sup>195</sup>

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<sup>192</sup> Field Belenky (1986), p.11.

<sup>193</sup> Gray, J., '*Narrative Inquiry*', Unpublished Paper, Edith Cowan University, Western Australia, in Bell (2005), p.23.

<sup>194</sup> Silverman (2006), p.20.

<sup>195</sup> Chapter Three p.153.

careful thought was given to the opening questions, which followed a method used by Kathrine Jack who advises 'the first questions need to convey the message that in this situation, the narrator's interpretation of her experience guides the interview'.<sup>196</sup> An example of such a question is 'can you tell me, in your own mind what events led to your child's adoption'. The participants were not compelled to give particular answers to any of the questions. The interviews were quite free-flowing with respondents engaged in lengthy narratives. These natural conversations produced detailed data which provided substantial material for analysis. When interviewing women, Anderson and Jack encourage the 'discarding of protocols and presuppositions, and instead, truly attend to narrators' self-evaluative comments, meta-statements, and the overall logic of the narrative'.<sup>197</sup> This deductive free approach provided me with a willingness to hand over the narrative control to the respondents who seemed to appreciate there being no restraint from an overly structured interview or a strict time frame.

### **3.14. DATA ANALYSIS**

Raw data cannot be analysed in its conceptual format, which in this study was transcribed conversations and notes taken during the interviews. Data requires organisation and sorting.<sup>198</sup> It then needs to be reduced in volume to make it manageable, readable and easy to understand.<sup>199</sup> The most basic form of data organisation is to cut up the pages of transcripts and place the answers into batches matching each code.<sup>200</sup> This is the method that was utilised and the

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<sup>196</sup> Anderson (1991), p.24.

<sup>197</sup> Ibid. p.9.

<sup>198</sup> Berg (2009), p.53.

<sup>199</sup> Ibid. p.54.

<sup>200</sup> Thody (2006), p.87.

'sliced' data was then coded into a thematic card index<sup>201</sup> identifying major themes. This was subsequently analysed with reference to the relevant law and respondents' social circumstances. Coding is defined as the application of labels or names against different pieces of data with the aim of picking out themes and identifying patterns which can then be analysed.<sup>202</sup> The process of selective coding<sup>203</sup> allows the researcher to make comparisons within the data set.<sup>204</sup> Care was taken to avoid analysis of the interviews in a manner Silverman stresses is simply providing accounts of the researchers interest in how the discourses are constructed rather than in their accuracy.<sup>205</sup> The accounts presented would, so far as possible, be true representation of the respondent's answers, so their own observations of their own lives.<sup>206</sup>

Subjective research raises issues around interpretive conflict, particularly where a researcher holds insider status. For this reason, it is crucial to maintain a neutral stance during data analysis. Katherine Borland suggests that the researcher must seek to find a balance between,

'respecting the speaker's ownership of her words as well as the researcher's commitment to scholarship, to achieve this, we must maintain equilibrium between the production of our text and our relationship with our participants.'<sup>207</sup>

To ensure 'commitment to scholarship' it was important to analyse and present the data not just objectively but also sympathetically. The best way in which to

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<sup>201</sup> Salazar, C., *A Third World Woman's Text: Between the Politics of Criticism and Cultural Politics*, in Anderson (1991), p.99.

<sup>202</sup> Punch (2005), p.199.

<sup>203</sup> Braun (2013), p.206.

<sup>204</sup> Gilbert (2008) p.325.

<sup>205</sup> Silverman (2006), p.25.

<sup>206</sup> This idea borrowed from Reinharz (1992), p.170. This method also reflects the researchers unsophisticated approach due to inexperience in data analysis.

<sup>207</sup> Borland, K., *"That's Not What I Said": Interpretive Conflict in Oral Narrative Research*, in Anderson (1991), p.63.

achieve this was to use a feminist approach to data analysis. This method stood as the most meaningful; in particular because, as Jackson and Mannix argue, 'feminism has a primary concern with acknowledging and valuing women's ways of being, thinking and doing'.<sup>208</sup> Despite taking a reflexive approach in the methodology, the decision was made not to include my personal responses to the participant's narratives in this chapter. This is despite the argument that reflexive feminist research 'encourages us to display in our writing the full interaction between ourselves and our participants'.<sup>209</sup> This chapter is about the birth mothers who came forward and shared their stories. The women who participated are immensely brave. All of them found the process of talking about their experiences extremely difficult and distressing. Many were in tears as they spoke and sometimes recalling an event was too painful and there were long silences where their grief was tangible down the phone line. The disseminated data cannot adequately convey the pain and grief that was expressed during interviews, the best that I can do is to ensure that each woman's narrative included in the findings is done so with respect and consideration to its owner.

The approach to data analysis was simplistic and care was taken to ensure validity of the data, this meaning 'the extent to which accounts accurately represent the social phenomena to which it refers'.<sup>210</sup> The aim was not to dilute the narratives by restrictive coding or searching too hard for answers within answers. Although there were sections within the semi structured<sup>211</sup> interview template which made it possible to group the data into themes, the actual words

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<sup>208</sup> Jackson (2004) p.64.

<sup>209</sup> Etherington (2004), p.32

<sup>210</sup> Hammersley, M., *Reading Ethnographic Research: A Critical Guide*, (1990), p.57.

<sup>211</sup> Along with the list of questions there was scope for the respondents to raise issues that were not anticipated. See Braun (2013), p.78.

of the birth mothers have been included verbatim<sup>212</sup> with only necessary 'cleaning up'<sup>213</sup> where words were indistinguishable or repeated or where statements were irrelevant, not logical or where words used were ambiguous and needed to be clarified with the interviewee.<sup>214</sup> Overall the analysis respects the method of Field Belenky et al who 'adopt a stance of trying to honour each woman's point of view'.<sup>215</sup>

Jackson and Mannix justify the decision the researcher makes not to overtly interfere with her participants' narratives 'feminist research aims to illuminate, substantiate and authenticate women's experiences, concerns and ways of being. Therefore, it is important that analysis of data does not impair the very thing it is seeking to elucidate'<sup>216</sup> This is not a sophisticated method of analysis, but it is argued that it captures the essence of the research aim which maintained that it would give birth mothers a voice and would not attempt to overcomplicate their views with unnecessary textual analysis. Thody advises the qualitative researcher to 'ensure polyvocality by selecting as many voices as possible and find ways to convey them sympathetically and ethically'.<sup>217</sup> Having spent several months listening to birth mothers it became apparent that they felt they had no voice, primarily because no one was interested in their experiences. Birth

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<sup>212</sup> Verbatim responses are a valid method of presenting data in the text where the intention is to avoid reducing responses down to numerically coded categories. Gilbert (2008), p.340.

<sup>213</sup> Analysing and reporting qualitative data a 'how to' guide, p.3 <https://goo.gl/7zCy4s> (Accessed 2 Jan 2018).

<sup>214</sup> Berg (2009), p.53.

<sup>215</sup> Field Belenky (1986), p.16.

<sup>216</sup> Jackson (2004), p.150 and Stark, E, Flitcraft, A, H., 'Women and Children at Risk: A Feminist Perspective on Child Abuse', (1988) 18 International Journal of Health Services 97 at p.99., both feminist studies of 'mothers experiences' show the benefits of leaving narratives intact and not necessarily contextualising the data.

<sup>217</sup> Thody (2006), p.143.



mothers' lack of voice was also a key finding in Memarnia's recent research.<sup>218</sup> Therefore, research into birth mothers should disseminate their perspectives and not the researcher's interpretation of them.

### **3.15. NARRATIVE AND CASE STUDIES**

Following the collection of data from the typology which represented the most valid and reliable responses to the questions, the research moved into the analysis stage. The data from 32 birth mothers will be presented in the form of case studies with an inclination towards narratives.<sup>219</sup> Case studies are defined as 'in-depth studies of specific units'<sup>220</sup> and 'a method to systematically investigate a set of related events with a specific aim of describing and explaining this phenomenon'.<sup>221</sup> Berg explains how the use of case study informs theory. He proposes that when used effectively it can provide 'a deep understanding of people and how they make sense of the stimuli with which they are confronted, how they frame what they see and hear, how they interpret this information'.<sup>222</sup> There are various classifications of the case study approach depending on the purpose of the research. For this thesis the best approach appeared to be the 'collective case study'.<sup>223</sup> Berg defines the collective case study as involving a holistic study of a number of instrumental cases which results in a clearer insight which in turn allows us to theorize effectively about the wider context.<sup>224</sup> Using this method means that it will not be possible to generalise findings, but it will mean that detailed and inclusive findings can be presented which a large scale

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<sup>218</sup> Memarnia (2015), p.306.

<sup>219</sup> Gilbert (2008), p.36.

<sup>220</sup> David (2011), p.165.

<sup>221</sup> Berg (2009), p.317.

<sup>222</sup> Ibid. p.319.

<sup>223</sup> Berg (2009), p.326.

<sup>224</sup> Ibid.

study may not reveal.<sup>225</sup> A question was raised about the ambiguous nature of each case study and the validity of such an approach in a legal thesis. In response to that question, Punch argues that where the study of law is concerned, a central role is applied to case methods in teaching, where a case is dissected in minute detail to prepare lawyers for future practice. He goes on to suggest that the knowledge built from the study of cases provides generalisability which is transferable from theory to case studies in research.<sup>226</sup>

Narrative enquiry complements case study as an approach to developing the data. It is a flexible method which allows the use of participant's stories in their unedited state. Bell explains 'narrative enquiry can include reflective life story, or the inclusion of excerpts from participant's stories to illustrate a theme developed by the researcher'.<sup>227</sup> She goes on to say that 'this approach is most appropriate when the researcher is interested in portraying intensely personal accounts of human experience'.<sup>228</sup> It is therefore the intention to present the case studies as narratives which aim to provide insight into the respondents' experiences whilst addressing the wider aims of the research. The appeal of narrative analysis is the way it can be articulated at two levels, with the stories of individuals as the first level and on the second level the collective story of birth mothers and adoption in the wider context.<sup>229</sup>

To ensure the risk of bias had been fully addressed the data was transcribed along with reference to the reflexive journal entries. As an insider researcher it

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<sup>225</sup> Bell (2005), p.10.

<sup>226</sup> Punch (2005), p.147.

<sup>227</sup> Bell (2005), p.22.

<sup>228</sup> Ibid. p.22.

<sup>229</sup> Gilbert (2008), p.425.

was vitally important to consider and reflect on the thought process while the data was being analysed. It can be challenging for any researcher to view their data objectively. Watt notes that 'qualitative research is time consuming, intimate and intense'.<sup>230</sup> This is true of my own research, but in addition, I was carrying out research where, for the first time since I lost my own children, I was purposely inviting birth mothers to share their experiences and feelings. The revisiting of lived traumatic experiences can trigger negative symptoms, such as anxiety, stress or depression. I worked through the research process being mindful of these issues.

Throughout data analysis I remained grounded and focused on my role as a researcher and persevered during periods where I lacked focus and doubted my ability. Ellis captures the essence of a research journey which concerns a previous personal loss. She validates those difficult feelings as a crucial element of the researches progress,

'The moves in and out of these emotional situations were painful yet therapeutic. They allowed me to experience emotionality safely in my office, reminded by the click of the keyboard that I was actually in this situation. If it became too intense I could stop and return to current time'.<sup>231</sup>

It is this 'safe distance' that allows a researcher like myself to safely and accurately investigate events that echo their own trauma, loss or pain. This is not something that should be entered lightly, but as Ellis reflects,

'It has a potential therapeutic effect which is probably a significant reason why many academics, especially working-class women, choose an autobiographical path for their research'.<sup>232</sup>

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<sup>230</sup> Watt (2007), p.97.

<sup>231</sup> Ellis (1996), p.160.

<sup>232</sup> Of which the author is both, DeVault (1997), p.226.

Academic writing and disclosure of personal feelings are supposed to be at odds with one another, yet those who advocate reflexivity in qualitative research argue against that assumption. Ely et al. suggest that 'qualitative writing by its nature involves the self too intimately to ignore wounds, scars and hard-won understandings'.<sup>233</sup> It is, as Flemons and Green say,

'A personal experience transformed into a social science text which demonstrates to people that this is not a singular experience, it is profoundly social, it is always amongst us and that is why taking the risk of telling it is so important'.<sup>234</sup>

Being reflexively involved in my research was a powerful and humbling experience. There have been two significant threads to this project which have run alongside each other. The first is the physical data which has gradually increased in volume and means that the theoretical study has produced physical material with which to make it a reality. The second is the knowledge and insight I have gained from my interactions with the participants. Through the knowledge I have gained of other women's experiences of adoption I have transformed from 'just a birth mother' to a researcher of birth mothers. To achieve my purpose of studying birth mothers I had to revisit my own experiences which formed the foundation of the study. Steiner suggests this is not an unusual result of being reflexive,

'We are talking about a circular process, in which reflexivity is the guiding relationship allowing for the circularity. This looping back may unfold as a spiralling, if we allow for multiple perspectives, and acknowledge that the 'same self' may be different as a result of its own self-pointing'.<sup>235</sup>

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<sup>233</sup> Ely, M., Vinz, et al., *On Writing Qualitative Research: Living by Words*, (1997), p.70.

<sup>234</sup> Flemons, G., Green, S., 'Stories that conform/stories that transform: A Conversation in Four Parts, In Bochner, A, P., Ellis, C (Eds), *Ethnographically Speaking: Autoethnography, Literature and Aesthetics*, (2002), p.167.

<sup>235</sup> Steiner, F., 'Introduction: Research as Self-Reflexivity, Self-Reflexivity as a Social Process', in Steiner, F(Ed), (1991), p.21.

Similarly, Walsh asserts that 'unlike practitioners of quantitative methods, we can learn as much about ourselves as when conducting research as we can about the persons with whom we collaborate'.<sup>236</sup> Fears of the appearance of self-indulgence and narcissism in sharing my own narrative through the methodology were often in the foreground of my consciousness. This would have contaminated the nature of the work which is based on self-effacement and integrity and most of all on truth. This is not and has never been the work of someone seeking to validate their own experiences through the lives of others. Narcissism has no place in this work, it has its roots firmly grounded to avoid bias as far as possible to do so and present a genuine, transparent and untarnished representation of birth mothers' experiences.

### **3.16. CONCLUSION**

This chapter has charted the journey of this thesis from a conceptual idea to a physical body of research. It has discussed the methodologies which were employed to carry out a study of birth mothers' experiences of adoption, with the main focus on a feminist approach. It has discussed the technical and ethical difficulties facing a researcher who wishes to access a vulnerable group to collect data. It has provided a critical evaluation of the use of reflexivity in qualitative research as a tool for an insider researcher to make preconceptions and biases transparent. To demonstrate this process excerpts of reflexive journal entries made during data collection have been included. It has presented the identification of typologies of participants with which to ensure data is valid and

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<sup>236</sup> Walsh, R, A., 'The problem of unconsciousness in qualitative research', (1996) 24:3 *British Journal of Guidance and Counselling* 377 at p.383.

reliable. Finally, it has discussed case studies and narrative enquiries as appropriate methods of data analysis.

## **CHAPTER FOUR: INTRODUCTION TO THE FINDINGS: THE SOCIAL EXPERIENCES OF BIRTH MOTHERS**

### **4.0. INTRODUCTION**

This chapter introduces the demographic results from the interviews and it provides contextual information about the participants. The remainder of the chapter presents findings which allow respondents' experiences of adoption to be placed into a wider social context. These findings focus on birth mothers' social circumstances and their perceptions of why adoption was the outcome for their children. Finally, it explores the social concept of stigma from the respondents' points of view and discovers that collective blaming of birth mothers is closely linked to their stigmatizing and social exclusion.

### **4.1. PROVIDING CONTEXT WITHIN THE LAW**

Adoption does not exist in a vacuum. It is usually the result of difficult personal circumstances where a family have experienced a protracted period of problems and subsequent interventions by multi-disciplinary agencies. Birth mothers' social environments have been extensively explored by Bouchier, Charlton, Neil and Memarnia.<sup>1</sup> Their research shows that gaining knowledge about social circumstances and events which occurred in the periods leading up to and following adoption remain an important aspect of research in this area. If intergenerational family problems are to be addressed before interventions take place, then they must be recognised, and qualitative research can provide the requisite knowledge for this.

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<sup>1</sup> Bouchier (1991), Charlton (1998), Neil (2013), pp.191-199, Memarnia (2015), pp.303-317.

## 4.2. CONFIDENTIALITY OF DATA

Despite most disclosing their names during recruitment and interviews the respondents were promised anonymity.<sup>2</sup> Their names were subsequently removed from the data and replaced with pseudonyms<sup>3</sup> which are confidentially linked to their real names only for their right to withdraw from the study.<sup>4</sup> This would allow for ease of identification and removal of their data. All the children referred to are known as C. All other parties are known as X or are referred to by their professional title such as 'social worker', 'guardian', 'counsellor'. All place names including local authorities have been removed due to the sensitive nature of the research.<sup>5</sup>

Although the names and details of partners, husbands and relatives have been purposely omitted to ensure uncomplicatedness in the narratives, it is helpful to give an overview of participants' relationships to provide context. The birth mother's accounts of family members and intimate relationships were complex, detailed and often confusing, with people being referred to that required continual clarification by the interviewer about their part in her story. There were also many allusions made to family members who had been involved in caring for the now adopted children whilst care proceedings were ongoing. Over immersion in this information risked that the focus of the interview, that of birth mothers and adoption, was lost. However, it was established that around the time of the adoptions six birth mothers were married and 14 lived with a partner, but in both

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<sup>2</sup> Berg (2009), p.90.

<sup>3</sup> Ibid. p.91.

<sup>4</sup> No respondents withdrew but following their interviews six women requested that some of their comments be removed from the data.

<sup>5</sup> Silverman (2006), pp. 319-320.



instances not necessarily the birth father of their children,<sup>6</sup> eight were single parents and the remaining four lived with family members or friends. At the time of the interviews the participants' relationships had altered significantly. A large proportion now lived alone, sometimes with older unadopted children, whilst smaller numbers had remained with their children's father or were in new relationships and had subsequent children. Around eight women had spent long periods following the adoptions living in mental health units, whilst others had been admitted to alcohol and drug detox' facilities. When they were discharged, they spoke of having to rebuild their lives from nothing. Whatever their circumstances before adoption, it was clear that the experience had radically shifted the status and form of their relationships and their families. Comments were reminiscent of enduring a war, 'my life was in tatters after the adoption'<sup>7</sup>, 'everything I had before was smashed to pieces',<sup>8</sup> 'I realise now that I had no foundation in my life, it was built on sand',<sup>9</sup> 'I was alone, everything that mattered to me was gone'.<sup>10</sup>

#### **4.3. DEMOGRAPHIC AND CONTEXTUAL INFORMATION ABOUT BIRTH MOTHERS**

The final data for analysis concerned the experiences of 32 women who corresponded with the Reflector typology defined in the methodology chapter.<sup>11</sup> These women identified as the sample population of birth mothers who have children who were adopted following being in the care of a local authority. The

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<sup>6</sup> One birth mother was in a same sex partnership.

<sup>7</sup> Cece BM5.

<sup>8</sup> Gill BM10.

<sup>9</sup> Sara BM29.

<sup>10</sup> Jessica BM13.

<sup>11</sup> Chapter three p.172.

adoptions occurred across 24 local authorities and were carried out under the ACA between the years 2005 and 2012 exclusively.<sup>12</sup> Collectively the participants have 56 children who have been adopted, 22 of which are boys and 34 of which are girls. The ages that the children were adopted range from youngest being under the age of one to the eldest being ten. The birth mothers ranged in age from 22 to 46 at the time of their interviews in the spring and summer of 2015. Their ages when the adoptions took place varied but with a higher proportion of younger women affected. Twenty one women were aged between 14 and 21, with the remaining twelve being between 23 and 37 years old. The findings revealed no indication that their age made a significant difference to how they coped with the adoption. For example, Soma was 14 when her child was adopted, and Michelle was 37. Both women experienced similar levels of crises, trauma and inability to manage the process. This finding was consistent in birth mothers across the age range. The only exception appeared to be that the younger birth mothers had more involvement with close family members such as mothers and grandparents and the older ones were for the most part dependent on, often abusive, partners, or were isolated and unsupported by wider family.

Twenty participants described themselves as white British. Seven described themselves as being from a mixed ethnic group. One described herself as black British/African. One described herself as white non-British. One described herself

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<sup>12</sup> There was no evidence that any changes in adoption laws or regulations over this period made any difference to the adoption experience, however some later cases made reference to 'Family Group Conferences'. This is a process led by family members to plan and make decisions for a child who is at risk. It is a voluntary process and families cannot be forced to have a family group conference. The greatest differences in experience were pertinent to different local authority areas but because the local authorities cannot be specified due to ethical implications it is not possible to measure these differences.

as Asian/British and the remaining two birth mothers chose not to disclose their ethnic group. Seventeen respondents had children living with them at home. These were either children who were born before the adoption(s) and stayed with their mothers or who were returned from care; or children who had been born after the adoption(s) had occurred.

### **BIRTH MOTHERS' SOCIAL CIRCUMSTANCES**

All 32 respondents described multiple problems, crises and instability in their lives when their local authority became involved with them. Most considered that their problems were made worse and not better with the onset of care proceedings because interventions did not result in sufficient support and guidance. Some spoke of being set 'impossible targets'<sup>13</sup> by practitioners. By this they meant improvements they would need to make to their care of their children to avoid having them removed. A common example was the requirement to leave an abusive relationship to protect the children concerned. However, those who were willing to do this felt they were not given enough time or help to make the necessary changes to their circumstances.

Prior to the most recent adoption, 20 birth mothers had earlier involvement with their local authority children's services, with previous children being looked after, adopted or being 'known' due to concerns about children. The remaining twelve said the intervention and eventual adoption were their first dealings with Children's Services. Around a third of the respondents said their children were returned to them more than once following being looked after, but the same problems reoccurred leading to children being removed permanently.

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<sup>13</sup> Becky BM3.

The respondents were asked if they knew why their children were adopted. Twenty nine birth mothers described interconnected problems with the remaining three saying they did not know exactly why. Reasons given for the grounds for care/placement orders leading to adoption were:

- Emotional abuse and/or risk of future emotional abuse in 29 cases.
- Neglect and/or risk of neglect in 25 cases.
- Failure to protect children from seeing or being caught up in domestic violence<sup>14</sup> in 20 cases.
- Mental illness of the mother in twelve cases.
- Drug and alcohol abuse with the partner or close family member in ten cases.
- Drug/alcohol problems with the birth mother in five cases.
- Mental illness of a partner in two cases.
- Two cases of mothers with a learning disability.
- A child's behavioural condition causing loss of parental control in one case.
- One case of physical injury to a child.
- One case of a mother with a physical illness and disability.

Additionally, the results showed that 28 respondents were experiencing domestic violence,<sup>15</sup> eight had been in long term foster care or local authority residential care themselves and two had been adopted from care when they were children.<sup>16</sup> Three had been homeless, and socio-economic deprivation was cited by 27

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<sup>14</sup> Section 31(9) CA 1989 as amended by s120 of the ACA includes harm suffered by children from seeing or hearing the ill treatment of another. So a child may be harmed by witnessing domestic violence.

<sup>15</sup> Broadhurst, K., Mason, C., et al., *Vulnerable Birth Mothers and Recurrent Care Proceedings, Final Summary Report, Lancaster University, Centre for Child and Family Justice Research*, (6 October 2017), <https://goo.gl/5u6Pt2> (Accessed 26 Dec 2017). Broadhurst et al. found that birth mothers who had been in care themselves were profoundly affected by the family justice process when their own children were in proceedings. They argue that this must be recognised by local authorities and the courts.

<sup>16</sup> Ibid. p.7. Broadhurst et al found that birth mothers' exposure to 'multiple and enduring harms' such as those listed was extremely high.

women, only three birth mothers were employed with the remaining in receipt of state benefits.<sup>17</sup>

#### 4.4 DOMESTIC VIOLENCE

Domestic violence was frequent in 28 of the birth mothers' lives. This was violence perpetrated by a male, and in one case a female partner, and this included many different types of violence.<sup>18</sup> Participants described abuse inflicted on them by husbands, partners and ex partners and sometimes other male family members such as step fathers and brothers. This violence involved physical and sexual abuse, from minor assaults, to injuries requiring hospital treatment including attempts to kill, sexual assault and rape. There were many accounts of mental and emotional abuse with examples such as putting them down constantly or blaming them for everything that went wrong including the abuse itself 'he said I pushed him into hitting me by winding him up, he was only doing what I asked for'.<sup>19</sup> Some women were imprisoned in their homes, verbally abused including threats made to them and their children, and financially abused by the withholding of money for food and bills. There were also accounts of extreme jealousy and controlling and coercive behaviours.<sup>20</sup> Although only one birth mother out of the

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<sup>17</sup> This finding raises the issues of social class. There is insufficient space to discuss class in the text but it is clear that the majority of respondents were representative of the lower social economic class. This concurs with previous research which finds strong inter-relationships between poverty, child abuse and child protection interventions. For a helpful analysis of poverty, social class and the relationship with child neglect and abuse see: Bywaters, P., Bunting, L, et al., The relationship between poverty, child abuse and neglect: an evidence review *The Joseph Rowntree Foundation*, (March 2016).

<sup>18</sup> For a helpful guide on known types of domestic violence see Women's Aid, What is domestic abuse? (2015), <https://www.womensaid.org.uk/information-support/what-is-domestic-abuse/> (Accessed 13<sup>th</sup> September 2017)

<sup>19</sup> Cassie BM4

<sup>20</sup> Coercive behaviour is an act or a pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten their victim

28 spoke of violence being directed towards her child as well as her, all the other birth mothers admitted that their children were exposed to, witnessed and were affected by the violence and abuse.

## **DOMESTIC VIOLENCE AND CAUSATION**

The birth mothers who spoke of domestic abuse being a significant factor in their child's adoption generally concurred that, according to the courts, the threshold for harm had been crossed by their inability to protect their children from being exposed to abuse. However, many respondents felt that they were blamed rather than supported and helped to escape the violence. There is sufficient factual evidence which shows that escaping domestic abuse can be an impossible thing for a woman to do alone.<sup>21</sup> Respondents spoke of being encouraged by social workers to report and testify against their abusers, but they were afraid to do so because they feared repercussions by their partners and they had little faith that the police or any other agency would do enough to protect them and their children.

Often domestic abuse was something birth mothers had normalised and were accustomed to living with.<sup>22</sup> Where they may have found rational explanations for their partners behaviour at first, Helena Kennedy notes this is a short-term

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Controlling behaviour is a range of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour

The Crown Prosecution Service, *Controlling or Coercive Behaviour in an Intimate or Family Relationship*, [http://www.cps.gov.uk/legal/a\\_to\\_c/controlling\\_or\\_coercive\\_behaviour/#a03](http://www.cps.gov.uk/legal/a_to_c/controlling_or_coercive_behaviour/#a03) (accessed 19<sup>th</sup> Feb 2017)

<sup>21</sup> Refuge, Barriers to leaving, (2017), <http://www.refuge.org.uk/about-domestic-violence/barriers-to-leaving/> (Accessed 13<sup>th</sup> September 2017)

<sup>22</sup> Kennedy, H., *Eve was Framed: Women and British Justice*, (1992) p.90. Kennedy describes women as incapable of taking action due to the devastating effect of long term abuse.

solution and 'after a while the excuses are no longer convincing but by then the cycle is so established it is impossible to break'.<sup>23</sup> Mandy explained how she was 'isolated and dependent' on her abusive partner without any friends or family she could ask for help from. In many cases domestic violence was reported to the police by the mother and by other people such as neighbours and children's schools, but no direct action was taken to address it at an early enough stage to prevent it escalating. Emma recalled such experiences,

'The violence, when that was going on, the police got called lots of times by me and my neighbours and a lot of the time they (the police) left doing nothing. I wanted him out and they just told him to calm down and off they went'.

The police failing to act when her husband was violent was not a deterrent to him and the consequences were devastating, with Emma becoming more depressed until her children were removed and eventually adopted. Rachel had a similar experience, she had endured many years of abuse by her partner which culminated in him throwing a brick through a foster carer's window where she and her child were staying. Rachel eventually lost her child to adoption and believes the 'system' failed to protect her and her daughter.

Paige had lived with a violent and controlling partner since she was 16.<sup>24</sup> She had lost her first child to adoption. When her second baby was born she was being supported by her local Police Domestic Violence Unit. During care proceedings she was admitted to a residential assessment unit with her baby to demonstrate that she could care for her child alone. The staff in the assessment unit appeared

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<sup>23</sup> Ibid. p.86.

<sup>24</sup> She was 22 at the time of her second child's birth.

insensitive to Paige's vulnerable position when her ex-partner was allowed onto the unit to have contact with her child,

'While he saw C I was made to sit outside in the garden in the pouring rain. I could see them through the window and he was laughing and giving me the finger. Although C was distressed and crying for a feed the staff refused to let me in to breastfeed her, shouting out of the door that the social worker did not wish for me and him to have contact with the baby together. Him being allowed in made me weaker again, made me fail. Even though I proved I could cope without him they let him have contact and he used that (contact) to emotionally abuse me, he used the time to laugh like it was all a big joke'.

This experience undermined Paige's belief that she would be supported to break away from the violence and care for her child. Subsequently she felt unable to engage with services.

Soma said that some help was offered to her, but it fell short of anything which enabled her to escape domestic abuse and care for her child, she explained,

'Although they kept giving C back to me, in the meantime they didn't teach me to deal with X when he was hitting me. They said leave him, I said how can I, I'm trapped? I needed advice on how to be independent and look after C. All the social worker said was I must stop letting people walk over me and control me yet that's exactly what social services did to me'.

A significant problem with suffering from long term domestic violence is a woman's tendency to close down emotionally in order to cope and function on a daily basis. This is known as 'lack of affect' or 'blunted affect'.<sup>25</sup> In essence women respond to others in a flat unemotional way. Events are recounted in a factual manner and lacking in body language and emotions. This is often caused by the trauma of violence and manifests unconsciously as a way of avoiding

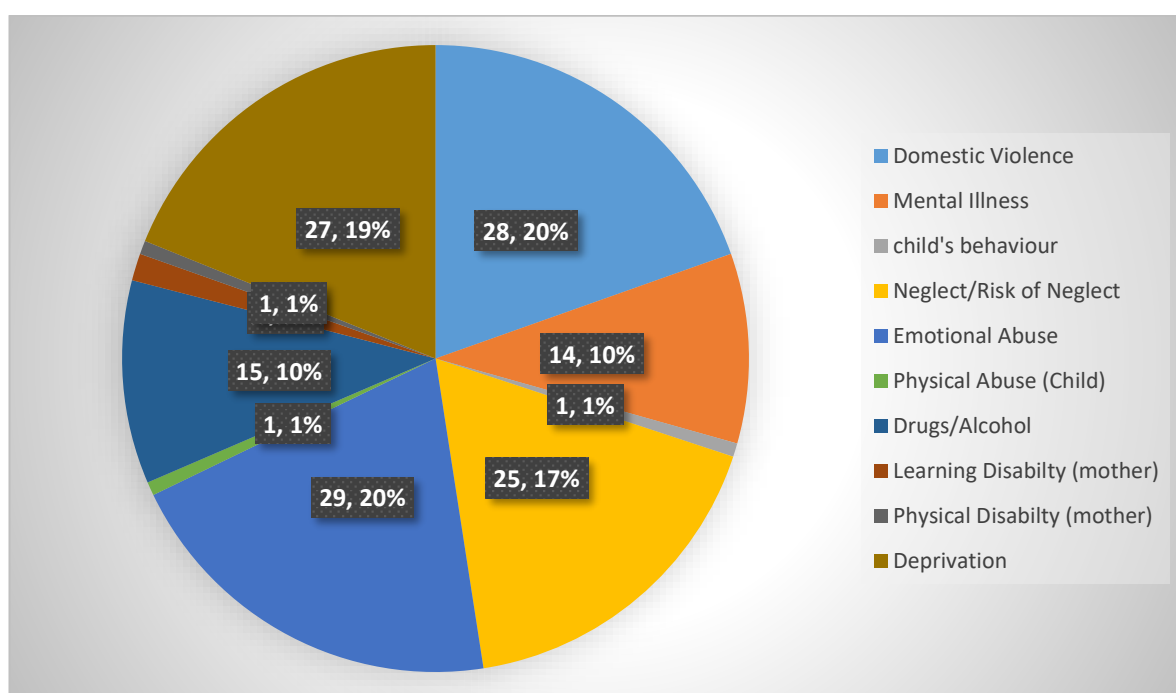
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<sup>25</sup> The theory of Blunted Affect, Good Therapy (2018)  
<https://www.goodtherapy.org/blog/psychpedia/blunted-affect>  
(Accessed on 12 Aug 2018).



vulnerability. Typically, blunted affect is established by the time care and adoption proceedings are underway.<sup>26</sup> A large number of respondents recalled their lack of emotion was used as evidence of non-engagement and indifference to their children, yet overwhelmingly many reported that the source of their problem, the violent partner, was regularly left out of the evidence placed before the court.<sup>27</sup>

**THE PIE CHART SHOWS PROPORTIONAL DATA OF THE ISSUES THE RESPONDENTS CITED AS REASONS FOR CARE PROCEEDINGS LEADING TO ADOPTION.**



#### **4.5. IT'S MY FAULT MY CHILDREN WERE ADOPTED**

Where some authors argue that inadequate or 'toxic'<sup>28</sup> birth mothers lack empathy to reflect on any suffering their children experienced, that view did not concur with

<sup>26</sup> Kennedy (1992) p.90.

<sup>27</sup> This finding is supported by Kennedy (1992), pp.87-99 and Stark (1988).

<sup>28</sup> Oakwater (2012), p.52-54.

the findings. Respondents spoke of being socially isolated in harmful and abusive relationships with partners or close family members. Some described the caregiving to their children as a joyless and painful exercise which dredged up buried memories of their own troubled childhoods. Respondents were open and candid about their 'failings'<sup>29</sup> where their children were concerned. They spoke of leaving young children alone while they went to find drugs or buy alcohol, neglecting their children's personal care and diets whilst they tried to manage mental illness or domestic violence, not giving their children enough attention and affection, and not attending to them when they were distressed. Many respondents admitted their focus was on their destructive relationships with other adults at the expense of their children's needs. It was during the collection of this particular data that Hamilton's 'hostile empathy' philosophy became an integral part the relationship between the interviewees and me.<sup>30</sup> Being able to engage with and acknowledge that birth mothers were sometimes responsible for harming their children, but were themselves victims of neglect and abuse, was a disturbing experience which forced me to face the risk that I may misinterpret the narrators due to my aversion to their disclosures. Owning up to unsympathetic and negative feelings about challenging interactions with participants in my reflexive journal supported and maintained ethical behaviour which in turn sustained validity and reliability of the data analysis, by ensuring it was not skewed by any biases.<sup>31</sup>

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<sup>29</sup> This word was used repeatedly by respondents.

<sup>30</sup> Hamilton (2008), pp. 35-39.

<sup>31</sup> Hamilton (2008) recorded her anger and hostility towards her respondents in her own reflexive journal allowing her to reflect on the risk that she may 'betray her narrators' by misinterpreting them in her own analysis.

The respondents were identified as the Reflector typology chiefly due to the evidence of self-reflection in their narratives. Their accounts of the process of adoption were insightful and demonstrated some retrospective understanding of why their children were removed and eventually adopted. At the beginning of the interviews many respondents repeatedly made references to their own culpability or fault that adoption was the outcome. They often qualified their answers by prefixing them with sentences such as 'I'm not saying that I wasn't to blame for all this, but', and 'I know you probably think I should never have had kids, but'. Even where they had endured years of domestic violence, respondents took responsibility for, 'allowing him to hit me'<sup>32</sup> or not leaving with the children and seeking help. However, during data analysis, I found that birth mothers had inadvertently explained where this self-blame originated. They blamed themselves primarily because others blamed them. They accepted this liability and their acquiescence to collective blame eroded what little self-esteem any of them possessed. When birth mothers were asked to elaborate on their experiences of blame it became apparent that partners, family members and authority figures, such as social workers and other helping professionals had expressly and impliedly attributed the blame entirely on birth mothers for the all the problems that led to adoption. There is research evidence that identifies a phenomenon called 'Mother Blaming'.<sup>33</sup> This is argued as 'a pervasive and serious problem' and 'a serious burden that complicates the already complex responsibilities that comprise mothering'.<sup>34</sup> 'Mother Blaming' is an important topic meriting its own research and is beyond the scope of this theses. However, the

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<sup>32</sup> Katie BM16.

<sup>33</sup> Jackson (2004), p.10.

<sup>34</sup> Ibid.

consistency in the respondents' stories of blame is reminiscent of the punishment of historical birth mothers. It is known that blame and stigma were attached to them through moral judgments. Blame imposed on birth mothers during and following the severing of the parental relationship is highly damaging. McCann and Pearlman argue that being the object of blame will impact negatively on the individual's ability to cope with trauma.<sup>35</sup> Treacher notes that blame 'has profound bearing on how professionals working in the area of adoption understand families and on the personal responses of those involved'.<sup>36</sup> I wanted to know, what was the long-term impact of being blamed and whether blame could be attributed to the stigmatizing of modern birth mothers.

#### **4.6. LEGAL STIGMATIZATION AND SOCIAL EXCLUSION OF BIRTH MOTHERS**

Charlton observes, for birth parents 'the stigma is from losing children through the adversarial courts'.<sup>37</sup> To be the object of stigma can have harmful consequences on the lives of those afflicted. Goffman found that three types of stigmatizing existed: physical deformations of the body, blemishes of individual character such as dishonesty, mental disorder, homosexuality and tribal stigma of race, nation and religion.<sup>38</sup> None of these attributes could be conclusively related to birth mothers' narratives; neither could the stigma of the past disgrace of unmarried motherhood, for it was this stereotype and not the adoption itself which purported such stigmatizing. However, all of Goffman's definitions possess the same sociological features which are universally applicable, he describes 'an

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<sup>35</sup> McCann, I, L., Pearlman, L, A., *Psychological Trauma and the Adult Survivor*, (1990), p17.

<sup>36</sup> Treacher (2000), p.67.

<sup>37</sup> Charlton (1998), p.60.

<sup>38</sup> Goffman (1963), p.8-9.

individual who possesses a trait that can obtrude itself upon attention and turn those of us whom she meets away from her. She possesses a stigma, an undesired differentness from what we had anticipated'.<sup>39</sup>

Goffman's 'traits' become the point of reference for the individual to suffer stigmatizing. Birth mothers are likely to be stigmatized before adoption by having children in care. Having children removed by the authorities is the 'deviant behaviour'<sup>40</sup> required as the pre-cursor for acquiring a stigma. Helena Kennedy argues that stigmatizing begins with care proceedings where 'the mother's failure is already established, with whatever circumstances that led to the separation of her and her child largely ignored'.<sup>41</sup> These 'circumstances' are likely to include poverty, being a 'battered women', alcohol and drug dependency and mental illness, now with the identity of a mother who has lost children to adoption adding another facet of stigmatization. According to Kennedy, discriminatory practices are a regular occurrence in many areas of law, including the family courts.<sup>42</sup> She observes that women with children in care 'always encounter unmatched prejudice'.<sup>43</sup> Neil argues that both contemporary and historical birth mothers have been stigmatized in similar ways,

'They experience distress, coercion where adoption is compulsory and parental responsibility is dissolved, disenfranchised grief because they remain silent about their loss, and stigma'.<sup>44</sup>

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<sup>39</sup> Ibid.

<sup>40</sup> Macionis, J, Plummer, K., *Sociology: A Global Introduction*, (2012), p.609.

<sup>41</sup> Kennedy (1992), p.74.

<sup>42</sup> Ibid. p.27.

<sup>43</sup> Ibid. p.73.

<sup>44</sup> Neil (2013), p.192.

Similarly, Proudman argues that there is a continuation of the 'stereotyping and stigmatizing of birth mothers that has existed across the decades of the 20<sup>th</sup> century'.<sup>45</sup>

### **'BAD MUMS'**

Respondents were asked if they had experiences of stigmatizing because of adoption. 'Stigmatizing' was not defined to them in order to avoid the use of a leading question. Four themes were identified in the data. The first was that birth mothers said they did endure stigmatizing and they believed this originated from professionals who were involved with them during and after adoption. Secondly, this stigmatizing often caused them to deny the existence of their adopted children. The ripple effect of this denial instigated their reluctance to integrate with society because of the fear the adoption would be discovered. Thirdly, many respondents felt they were profoundly misunderstood by society and they spent a great deal of time preoccupied with what others may think of them, in particular they feared the label of 'child abuser'. Fourthly, the 'adoption stigma' was an additional identifiable stigma to that which many said they already lived under, notably through mental illness, being 'a battered woman' and alcoholism. Interestingly the stigma from adoption was the only part of their identity they kept secret. We shall consider these themes in more detail.

The corresponding experiences of birth mothers across the temporal period was that the creation/reinforcement of discrimination and stigma originated from authorities who were instrumental in the adoption process and professionals who were involved in their lives after adoption. Stigmatizing imposed by professionals

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<sup>45</sup> Proudman (2012), p.988.

occurred from the point of child protection interventions through the adoption process and post adoption. A number of birth mothers commented that they felt the sharing of negative information between parties and agencies reinforced the stigmatizing because this information was relied upon in preference to individuals forming their own views, as noted by Amy 'they had already made their minds up about me before they met me, from my files'. This treatment left birth mothers socially isolated and afraid to talk about the adoption to people in their community. They often lived their lives 'in hiding'. Disappearing from 'normal' society is symptomatic of those who are stigmatized and according to Goffman leads to further isolation, depression and a cycle of fear of interactions with the public.<sup>46</sup> The resulting lack of social feedback is that which Goffman attributes to suspicion, hostility, anxiety and bewilderment.<sup>47</sup> This is evident in the findings. Respondents avoided close relationships, making friends or pursuing goals, such as a job or further education. Those who did try to integrate into society denied having children or admitted only to having the children in their care. This secrecy left them with an ongoing sense of guilt and shame towards their adopted children, together with the anxiety that one day the children they had denied would 'make contact and the secret will be out'.<sup>48</sup>

The data was consistent with the finding that respondents felt they were stigmatized by authorities. They said they were bullied, intimidated, harassed and maligned by some professionals in children's services. There were also accounts of such treatment by other professionals such as a psychiatrist, a community psychiatric nurse, health visitors, mental health social workers and a care worker

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<sup>46</sup> Goffman (1963), p.12.

<sup>47</sup> Ibid. p.24.

<sup>48</sup> Cassie BM4.

from Supporting People.<sup>49</sup> Respondents described professionals making unsolicited negative comments about their progress or making repeated referrals to child protection teams despite them being officially discharged from children's services. Tracy said she 'lived in fear' of her community support worker because she continually threatened that she had the authority to have her baby removed from home and Tracy hospitalised. Amy said that following the placement proceedings she was 'bullied and pressured to get sterilized' by the guardian ad litem. Predominately the narratives centred on respondents feeling they would never be liberated from the threat of future care proceedings, for example Sita explained,

'It's the social (services) that make the stigma. I had another child and (agreed) to work with them. They still went to court to get a care order, but the judge said no because there wasn't any evidence she (child) was at risk. I could see it in their faces, they couldn't accept the judge's decision or allow me to be a success. I have to live under that stigma they made, that I can never be a good mum. I've got a bad record'.

Amy said she experienced stigmatizing during a court hearing for contact with her child whose adoption had broken down 'I was in this room with my solicitor, the guardian the social worker, C's solicitor came in and shook everyone's hands. I held mine out, but she refused to shake it'. Cece also felt that she was stigmatized because of past events, without her present circumstances being considered,

'I've been stigmatized; it happens a lot in women's aid. Even women who do everything they are told to do, stay in the refuge, agree to (get) an injunction against their bloke, move areas, all of it. Their social worker doesn't trust them, they suspect us all the time, they say we are seeing the

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<sup>49</sup> Supporting People was introduced by the Government in 2003. It enables Local Authorities to fund services that provide housing related support. The needs of vulnerable people are identified locally, and support is targeted to enable vulnerable people to move towards or maintain independence in their accommodation. This support helps people to develop a stable environment, from which they can avoid problems that can lead to hospitalisation, institutional care or homelessness. Plymouth City Council, *Adult Social Care, EAC Services Directory*, (11 Feb 2014), <https://goo.gl/HkyivQ> (Accessed 8 September 2017).



blokes in secret, telling lies, even when we are totally honest they think we are lying’.

These accounts concur with what Broadhurst calls ‘legal stigmatization’. Drawing on previous research she argues that when child protection workers are faced with cases where parents have lost previous children to adoption, the concern about risk prompts them to ‘fall back into the safety zone of previous assessment’<sup>50</sup> instead of assessing parents in a new light by considering their improvements.

Emma believed stigma was reinforced by the refusal of professionals to recognise her worth when she had a subsequent child,

‘It’s shame *and* stigma for me. I think we are discriminated against by the social workers, the health visitor and people in Cafcass, even my solicitor looked down on me. I’m ashamed of failing my kids, but there is good in me, I’ve proved that, but the good isn’t recognised, it doesn’t match what they wrote and said about me, so they ignore it’.

## **PARALLELS WITH HISTORICAL BIRTH MOTHERS: SECRECY AND DENIAL**

Gill said she was stigmatized generally, but the ‘adoption stigma’ was far worse than any other she experienced,

‘[Course] there is adoption stigma. It doesn’t bother me that people think I’m scum who was in prison, homeless, mad, cause (sic) they have their own skeletons in their wardrobes; but authority saying I’m a bad mum cause I lost my baby, that bothers me, that’s hard to live with’.

Karen also viewed the adoption stigma as worse than that which she already experienced as a person with mental illness, ‘well I’m ashamed to talk about it in case people think I abused them but I’m not ashamed of being disabled or mentally ill, that’s not my fault’. The fear that people would see her as a child abuser prevented Karen from speaking about the adoption,

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<sup>50</sup> Broadhurst, (2017), p.6.

‘The stigma is that if you tell someone about the adoption they assume you must have done something really bad to cause it. When in some cases, my case, I didn’t do anything wrong. I just wasn’t good enough for them, a good enough parent in the eyes of the law’.

Karis felt that stigmatizing categorised her as unworthy of help,

‘In the mother and baby unit a lot of families had the social (services) in their lives, so we didn’t judge each other. But you really find out how you are labelled as a bad mum when you ask for help. I wrote to the head of the family courts, the minister for children, the human rights courts, X (human rights barrister), and do you think any of them answered me? You know stigma? Well there’s your answer. None of them would ever believe a ‘bad mother’ would be a victim of a miscarriage of justice’.

Once they felt stigmatized by professionals, birth mothers avoided further stigma in society by remaining silent about losing a child to adoption. Often the solution to this was moving to another area where they were not known and keeping the existence of their adopted child a secret. This need for secrecy speaks of the damage of stigmatizing, otherwise birth mothers would feel free to acknowledge their adopted children. Jessica recalled the moment she accidentally ‘slipped up about the kids’ when talking to another mother in the school playground,

‘Me and this other mum was (sic) talking about breastfeeding. I said I must have breastfed for 6 years of my life. She’s like how? (sic) You only have 1 child, how have you breastfed her for 6 years when she’s only 5? She gave me a funny look and I felt so awful, but I just couldn’t say the truth that I had 2 others gone to adoption, I knew she would have told everyone. I couldn’t stand the whispers and the looks, imagine the shame’.

Jessica’s experience is echoed in Broadhurst’s observations of birth parent’s social stigma,

‘For this group of parents, the sheer enormity of social stigma permeates everyday social life. How does a parent explain the absence of children to other parents who he or she previously met at the school gates? As the failed parent looks in on the family life of others, thus serves as a daily and

painful reminder of the adopted status of their children, stigma intersects with loss'.<sup>51</sup>

Fulcher and Scott argue that the stigmatized 'organize their lives and identities around their deviance'.<sup>52</sup> The findings concurred with this. Many birth mothers were only able to 'be themselves' when they were amongst others in the same situation. Respondents spoke of limited situations where they felt able to be open about losing their children without fear of being judged. These were mainly support groups where other birth parents attended. Mandy called adoption 'my dirty secret'. She maintained a safe 'comfort zone', in her case Women's Aid meetings where,

'It's normal to have kids adopted like it's normal to be hit and raped or be told we are survivors, but you ask me to tell a stranger that I was with a bloke who battered me and for that I lost my kids, they would blame me...I'm the bad mother. If you lose a kid, you will always be marked'.

Rachel experienced complete isolation following the adoption,

'The shame broke me apart. I didn't leave my room in the hostel for 3 months only to use the loo, shower or make toast. I lived like that and not one person came round to see if I was OK. After court you are forgotten, like a piece of rubbish'.

Maria's case had been reported in the local newspaper because of a police confrontation with her ex-partner which she and her children were caught up in.

Maria said she needed to hide to avoid the shame she felt,

'I moved to a different area, people who I used to call friends were gossiping behind my back. When you lose a child in these circumstances people choose to believe the authority figures. It might be yesterday's news to some people, but it's always going to be my life'.

Louisa felt she must deny her adopted children to avoid being judged,

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<sup>51</sup> Broadhurst, K., 'Birth Parents and the Collateral Consequences of Court Ordered Child Removal: Towards a Comprehensive Framework' (2017) 31 *International Journal of Law, Policy and the Family* 1, at p.5.

<sup>52</sup> Fulcher, J., Scott, J., *Sociology*, (2011), p.230.

'I do believe in stigma. I live like a recluse. I moved away. I even told a nurse in the doctor's surgery that my child had died, how terrible is that? but anything was better than telling her my child was adopted'.

Some found that stigma manifested in unethical treatment of them, which for the most part, was considered acceptable by others. Mel was shocked at the way she was treated by her local authority and the adoptive parents,

'The adopters have 2 biological children as well as mine. They go to a good private school in my area, they weren't willing to move just because of me living so close. The social worker advised them to instruct their solicitor, which they did, to ask the judge to order me to move so I would never bump into them or C's. The judge refused, he said I could live where I liked, but it hit me, that was how I was seen, as a piece of shit who could be ordered to move away to make other people's lives easier'. Once you lose your kids you are nothing'.

Some birth mothers spoke of the fear that people discovering their children had been adopted would result in them being labelled as child abusers. A number of references were made to high profile child abuse cases and respondents were concerned that they would be identified and confronted in their communities by 'vigilantes or haters'.<sup>53</sup> They felt there was little public understanding of the real reasons why adoption was the outcome for their children, and most felt that media stories of child abuse led to their stereotyping. Broadhurst's argument reinforces that these concerns are warranted. She notes that a mother's disclosure of child removal, even due to incidents of domestic violence, is generally met with suspicion, and media portrayals of child abusers 'prompt questions by other parents that something sinister lurks behind her testimony'.<sup>54</sup>

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<sup>53</sup> Louisa BM18. These fears are sustained by evidence that tragedies such as Dennis O'Neal (1948), Maria Colwell (1974) and Jasmine Beckford (1985) raised public and political awareness of abuse of children. See Devine, L., Policing parents, protecting children? Rethinking Child Protection Strategy: Initial findings from trend data. In: 'Is the Child Protection System fit for purpose?' *The Transparency Project Conference* (1 June 2015) London, NCVO Conference Centre, Kings Cross, London.

<sup>54</sup> Broadhurst (2017) p.5.

Broadhurst argues that in becoming a discredited minority, the mother cannot readily benefit from communal experience to resolve her loss, shame and guilt'.<sup>55</sup> This was yet another aspect of stigma which led to birth mothers' social isolation and the need to deny their adopted children. Some of their reflections bore striking resemblances to the words of historical birth mothers who were forced to relinquish their children to adoption during the 20<sup>th</sup> century;<sup>56</sup> 'the only way to carry on was to pretend C was never born, so adoption never happened'.<sup>57</sup> Compare with 'I gave up 2 babies for adoption during the 1960s, the only way to get on with my life afterwards was to keep those births a secret'.<sup>58</sup> Memarnia's respondents also denied the existence of their adopted children. Once their child was adopted many mothers also questioned their identities to the point where they no longer felt like mothers, a part of them was lost.<sup>59</sup>

#### **4.7. THE LONG-TERM IMPACT OF STIGMA**

Respondents felt stigmatizing had a long-term impact on their quality of life and their ability to achieve positive change. Neil argues that this 'is the stigma is of failed parenting, they are humiliated by courts proceedings and their faults are continuously emphasised by professionals'<sup>60</sup> This treatment of birth mothers reinforced the belief that they would not be not be accepted or empathised with if people found out they had lost a child through adoption. This concurs with

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<sup>55</sup> Ibid.

<sup>56</sup> For the historical birth mother, the secrecy and denial of the birth and existence of their child was derived from the shame of the child's 'illegitimacy' due to her unmarried status. The modern birth mothers' secrecy is rooted in the shame of having a child removed and adopted by the state. See Thane (2012) Chapter 1 'Secrets and Lies' for an excellent understanding of the lives of unmarried mothers in 20<sup>th</sup> century England.

<sup>57</sup> Gill BM10.

<sup>58</sup> Interview with 'historical birth mother', Movement for Adoption Apology (May 2016).

<sup>59</sup> Memarnia (2015), p.308.

<sup>60</sup> Neil (2013), p192.

Memarnia, who views stigma as relatable to the problems birth mothers have with expressing their emotions about the loss of their child 'within the context of the invalidation of their emotional pain and the stigma and judgment experienced, they appear to feel unable to tolerate these emotions or share them with others, instead turning to numbing and disconnection'.<sup>61</sup> Memarnia argues that further social exclusion occurs if birth mothers commit a 'socially unacceptable act' such as expressing emotions because of the child being adopted.<sup>62</sup> Subsequently they internalise grief to avoid being stigmatized in society as well. Birth mothers' grief is not accepted or recognised and thus they do not receive any support from their community.

Research has shown that stigmatizing of service users by professional bodies is not unusual. This is known as 'Institutional Stigma' and 'refers to an organization's policies or culture of negative attitudes and beliefs'.<sup>63</sup> Being unable to professionally transcend negative opinions of birth mothers will undoubtedly impact on practitioners' aptitude to support them. The defensive culture of the adversarial legal system does little to promote unity between practitioners and families, but it would seem that stigmatizing by professionals is not always deliberate. Leonie Baldwin, a former senior social worker points out that the adoption process can be emotionally charged, and commonly social workers may lack the confidence to interact with parents and the intensity of their feelings after the adoption has been finalised. She explains 'it is very easy to lose engagement

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<sup>61</sup> Memarnia (2015), p.307.

<sup>62</sup> Ibid.

<sup>63</sup> Definitions of Stigma and Discrimination, *The Stigma, Discrimination, Reduction and Advancing Policy to Eliminate Discrimination Program* <https://goo.gl/HfXdMd> (Accessed 4 Jan 2018).

with birth parents at that point, they often become angry or disillusioned'.<sup>64</sup> However, Burnell argues that relationships between birth parents and social workers 'has become contaminated by the adversarial approach'.<sup>65</sup> It is easy to see how practitioners' diffidence and disengagement has been interpreted by birth mothers as negativity directed at them which is enduring, negative and damaging.

Institutionalized stigmatizing must be addressed if attitudes towards birth mothers are to improve. Charlton argues 'understanding what influences one's own professional practice is an important part of one's ability to have empathy with another'.<sup>66</sup> Proudman notes that empathy and compassion for parents is often viewed by social workers as 'a reward' and because birth mothers are blamed for the majority of the problems that led to child protection proceedings, they are not worthy of being rewarded.<sup>67</sup> Proudman also believes that birth mothers' bond with their children is generally perceived as insignificant and subsequently breaking that bond requires no concern for their feelings.<sup>68</sup> Stark and Flitcraft argue that birth mothers are stereotyped as 'destructive, disturbed women or merely sad, deprived, needy human beings'.<sup>69</sup> This mind-set towards birth mothers not only leaves them feeling stigmatized. It leads to anger and a sense of injustice. They also maintain distrust and dislike of agencies who they may be required to work with if they have subsequent children.

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<sup>64</sup> Walker, R., Community Care, *Keeping birth parents in the loop*, (14 June 2010), <https://goo.gl/giJKna> (Accessed 30 Dec 2017).

<sup>65</sup> Burnell, A., *Exploring Open Adoption: a post adoption perspective*, in, *Exploring Openness in Adoption*, (1993), pp. 79-89.

<sup>66</sup> Charlton (1998), p.27.

<sup>67</sup> Proudman (2012), p.990.

<sup>68</sup> Ibid.

<sup>69</sup> Stark (1988) p.99.

The findings show that it is not necessarily birth mothers' unjustified defensiveness towards professionals that is so often portrayed,<sup>70</sup> but an understandable self-protectiveness from the way in which they have been treated in a system where imbalance of power is a central issue. For the most part respondents felt they deserved to be stigmatized, they accepted and carried the shame of failed parenting as an integral part of their identities, and this should not be the case. There is a huge social movement around challenging stigma attached to other social issues such as mental health,<sup>71</sup> but the stigma of failed parenting thrives. Both the media and politicians shame bad parents<sup>72</sup> and this undoubtedly influences the way society views women who lose their children to adoption.

#### **4.8. CHALLENGING STIGMA**

Charlton suggests there are a number of ways in which professional bodies can seek to transform the negative attitudes and approaches towards birth families in general. Firstly, there should be the availability of '*independent*'<sup>73</sup> services to engage with and support birth mothers during and after adoption.<sup>74</sup> I would add that unless their role is one of monitoring subsequent children, these independent services should not necessarily be made aware of the adoption. Charlton continues that these services should be separate from the decision makers involved in the adoption. This should include advocacy, which ensures birth mothers can challenge the decisions and the views of authorities in an

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<sup>70</sup> See *Medway Council v A and Others (Learning Disability: Foster Placement)* [2015] EWFC B66. Evidence was placed before the court that a foster carer was racially abusive to a mother with a learning disability who she was being paid to care for.

<sup>71</sup> See, Time to Change, <https://www.time-to-change.org.uk/> (Accessed 4 Jan 2018).

<sup>72</sup> Bingham, *The Telegraph* (7 Sept 2009).

<sup>73</sup> Emphasis added.

<sup>74</sup> Charlton (1998), p21.



appropriate and impartial manner, ensuring a fair process for all concerned. It is crucial that the services are accessible, non-stigmatizing, non-judgmental, and confidential. Finally, Charlton argues for compulsory training programmes for social workers, guardians, judges and other professionals to raise awareness of birth parents' perspectives.<sup>75</sup>

Birth mothers who felt they had been stigmatized held similar views to Charlton. Although they acknowledged that their subsequent children may be 'under the spot light' where their welfare is concerned, they wanted to be allowed to move on and parent their children without being afraid of unwarranted interventions. They felt that some professionals allowed their personal views to taint their official roles which in turn led to abuse of their power. Birth mothers wanted the right to challenge these individuals without fear of reprisals such as hospitalisation and child protection investigations. They wanted to be supported by people who were not judgmental and were properly trained to work with them and not against them. With the right kind of support many felt they would not have to hide or deny their adopted children. However, some were cynical. They felt there was little possibility that attitudes would change because of the way the media portrays parents of adoption children.

At the review stage of the thesis, a question was raised whether contemporary birth mothers still endure stigmatizing as historical birth mothers did.<sup>76</sup> From the findings this question can be answered in the affirmative. Not only does stigma have detrimental impact on many aspects of these women's lives, it undoubtedly affects their subsequent children who grow up in the shadow of their mother's

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<sup>75</sup> Ibid. p.121

<sup>76</sup> Chapter Two p.106.

stigmatizing. For women to make a success of parenting they must be allowed to move forward without being subjected to others' prejudices. We shall see in the next chapter that the stigmatizing sows its seeds when the court process begins, or sometimes before that. The respondents accepted that they failed their children, for many reasons, but all were facing family crises and had multiple needs. They are people whose relationships and life experiences have been dysfunctional since childhood, and they subsequently made many detrimental life choices which resulted in their children being permanently removed. For most of these women their relationships with their children were their only experiences of unconditional love, and they had to live with the guilt that they had hurt their children and let them down. They then have a lifetime of bereavement from the loss. For most birth mothers this alone is their punishment, what many called a life sentence. Stigma simply reinforces these beliefs. It is therefore important that research into adoption raises the issue of stigma and seeks to confront and challenge it.

#### **4.9. CONCLUSION**

This chapter has introduced the demographic results from the interviews and provides contextual information about the participants. The chapter presented findings which allowed respondents' experiences of adoption to be placed into a wider social context. It was found that birth mothers felt there were interrelated problems which led to adoption. It explored the social concept of stigma which was raised at the review stage of the thesis. This was analysed from the respondents' points of view. It discovered that birth mothers did experience stigma and they felt they were stigmatized by professionals and agencies who were involve with them. This stigma had a long term negative impact on the lives

of birth mothers. Finally, the chapter provided a summary of ways in which the stigmatizing of birth mothers can be challenged and overcome.

## **CHAPTER FIVE: THE EXPERIENCES OF BIRTH MOTHERS AND THE LAW**

### **5.0. INTRODUCTION**

This chapter focuses on the results from the interview data which are directly referential to the state of the law. These findings were based on the legal framework promulgated in the Adoption and Children Act 2002 (ACA), the Adoption Agency Regulations 2005 (AAR), the Adoption Support Services Regulations 2005 (ASSR) and the Adoption National Minimum Standards 2014 (NMS). It presents the results as narratives, which are contextualised within the legal framework of the relevant adoption legislation and a number of academic observations on best practice. Parts of the ACA which refer directly to birth parents, one would expect there to be clear application and evidence of these provisions to individuals' circumstances. Also relevant to birth families and adoption is the subordinate legislation, these being the previously mentioned AAR, ASSR and the NMS.

Analysis of the results has revealed significant deficiencies in the practice of agencies empowered by the ACA. The evidence for this can be seen in a large number of concurring results from individual interviews. For the sake of clarity, the findings are presented under the separate themes, these are: notification of the plan to adopt, respondents who consented to placement/adoption, respondents whose consent to placement/adoption was dispensed with, experiences of the court process, terminating contact and goodbye meetings, birth mother's involvement in the adoption process, expectations of treatment, the life story book, post adoption counselling and post adoption contact.

## **5.1. FINDINGS WITHIN THE STATUTORY FRAMEWORK: NOTIFICATION OF THE PLAN TO ADOPT**

When an adoption agency has made the decision that a child should be placed for adoption they must attempt to notify birth parents. AAR regulation 19(3) provides that the adoption agency must, if their whereabouts are known to the agency, notify in writing the parent or guardian. Further, under AAR regulation 14, birth parents must be consulted about the plans to adopt their child. Thirty one respondents believed that their local authority or adoption agency knew of their whereabouts around the time they made the formal decision to place their child for adoption, one had moved area and had not advised the local authority. Even those who were inpatients in hospital or living in temporary accommodation said that their addresses were known because they were in regular contact with local authorities for the purposes of child contact, Looked After Children's Reviews,<sup>1</sup> or meetings involving relatives to assess them as potential carers for children. A first analysis of the data found that 25 respondents were notified of a local authority's plan to place their child for adoption with seven saying they were never informed and who found out by other means. However, the findings were not straightforward. Only ten respondents were certain that they had received formal notification of the plan for adoption, either in writing directly to them or via their solicitor. These birth mothers were satisfied that they had sufficient time to seek legal advice.

Nine birth mothers recalled that adoption was offhandedly referred to throughout their children's time in care, and sometimes before a care order was obtained.

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<sup>1</sup> Family Rights Group, Duties on Children's Services when children are in the care system, (May 2015) pp.18-19 <https://goo.gl/UYatpp> (Accessed 18 Nov 17).

Amy was told of the plan for adoption whilst she was still pregnant, and before any order had been applied for under the CA 1989 to take her baby into care. This informal notice was given seemingly with the justification that this was Amy's third child and her previous children had been adopted. Similarly, Gill was told that an adopter was 'lined up' for her unborn baby during her pre-birth assessment. Jessica recalled a social worker talking about her daughter 'being put forward for adoption' when she had only been looked after for three days. This unofficial or conversational mentioning of adoption understandably unnerved birth mothers; it left them feeling confused and unsure whether they should be seeking legal advice because of the unofficial nature of the comments. Nica recalled that during supervised contact with her children 'all the social worker ever talked about was permanence'. Nica did not link the word permanence to adoption, consequently she agreed with the social worker that permanence was the best solution for her children; a misunderstanding which was later translated in a permanence report<sup>2</sup> that stated Nica supported adoption for her children. This misrepresentation left Nica feeling pressurised to consent to her children's eventual placement.

The notification of birth parents when adoption is part of the agenda is a legal requirement. It is also crucial if rights-based safeguards are to be applied such as the opportunity to obtain legal advice. The practice of mentioning permanence or adoption informally to birth parents before a formal decision has been made

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<sup>2</sup> A Permanence Report is a comprehensive document prepared by an Independent Social Worker. The Independent Social Worker is responsible for gathering and analysing information about a child and their needs and making a recommendation about the long-term care arrangements for a child. Avocet: Child Focused Social Work, (2017) <https://goo.gl/Sd6gZ7> (Accessed 9 August 2017).

by the Agency Decision Maker<sup>3</sup> is unfair and potentially sets an early precedent of overriding birth mothers' rights in the adoption process; because some respondents then felt under intense pressure to consent without any legal advice because of comments made that their children would suffer if they had to wait in care. This conduct suggests an element of emotional blackmail which is highly inappropriate in formal plans for a child's adoption.

## **5.2. THE EXPERIENCES OF BIRTH MOTHERS WHO GAVE CONSENT TO PLACEMENT OF THEIR CHILD**

Birth parents providing statutory consent to placement empowers a local authority or an adoption agency to place a child with adopters.<sup>4</sup> ACA section 19(1)(b) allows birth parents to provide general consent to placement without the involvement of the courts.<sup>5</sup> Section 52(5) defines that "Consent" means consent given unconditionally and with full understanding of what is involved'. According to section 52(7) consent must be provided in accordance with government rules.<sup>6</sup> For consent to be effective, it must be witnessed by a Children and Family Court Advisory and Support Service (Cafcass) officer, and the consequences of giving consent to placement<sup>7</sup> must be carefully and fully explained to birth parent(s) by

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<sup>3</sup> The agency's decision maker is a senior person within the adoption agency. This person has the authority to make decisions on the agency's behalf about whether a child should be placed for adoption. See Adoption: what does it mean for birth parents? Family Rights Group, <https://goo.gl/9bZKwo> (Accessed 9 August 2017).

<sup>4</sup> The aim of placement is to enable consent to adoption to be acquired at placement stage and birth parents can subsequently only apply for leave to oppose an adoption order if there has been a change of circumstances.

<sup>5</sup> Allen (2003), p.79. It is important to note that the giving of consent does not prevent the local authority from applying to court for a placement order.

<sup>6</sup> The forms for s19 consent were published in 2005 as part of the Practice Direction supplementing the Family Procedure (Adoption Rules) 2005. Forms A100, A101, A102 <https://goo.gl/m2ziBr> (Accessed 18 Nov 17).

<sup>7</sup> These consequences are: the child continues to be '*looked after*' but the status of any ongoing contact may change because any contact order made under the CA is terminated. Parental responsibility is shared with the local authority and if there are prospective adopters they also share parental responsibility.

both the local authority and Cafcass. Herring explains that this process was designed ensure that consent is given unconditionally and with full understanding.<sup>8</sup> Further obligations on parental consent and providing birth parents with information on placement and adoption can be found in the AAR. Regulation 14(1)(b) requires the adoption agency or local authority to,

‘Explain to him (i) the procedure in relation to both placement for adoption and adoption; (ii) the legal implications of (aa) giving consent to placement for adoption under section 19 of the Act (bb) giving consent to the making of a future adoption order under section 20 of the Act and (cc) a placement order; and (iii) the legal implications of adoption, and provide him with written information about these matters’.

The findings, although small scale, indicate that ‘consented to adoptions’ are not ‘voluntary adoptions’ and the giving of consent is often the result of birth mothers feeling that they have no choice but to consent, rather than having freedom to make an informed choice. To learn more about consented-to placements birth mothers were asked about their reasons for giving consent, how it was obtained, whether they felt their consent was given ‘unconditionally and with full understanding of what was involved’ and from that, how effective they thought the information that they were given of the consequences of giving consent was. Six birth mothers consented to their child’s placement and adoption. Four of those said that they felt pressurised into giving their consent. Overall the level of advice and information provided to them appeared to fall short of the statutory requirements. However, given that all the placements led to adoption orders the court would have been satisfied that their consent met with the statutory requirements.<sup>9</sup>

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<sup>8</sup> Herring (2015), p.699.

<sup>9</sup> ACA 2002 s47.



Gill consented to the placement of her baby who was subject to a care order soon after birth. Gill did not feel that it was informed because she was not advised of any other option except the requirement to consent. She was an inpatient in a psychiatric unit when she signed the consent form,

‘The woman (from Cafcass) came with the forms. I didn’t have many visitors, so it was like this event to me. She saw me on my own in the dining room. She warned me that I was giving consent for her to be adopted, problem is at the time with the strong (medication) I was on I didn’t get what that meant, then she said if I refused (to consent) the courts would override it, and I just accepted that. I had no time to think about it’.

Gill regretted giving consent so readily, years later she saw the situation differently,

‘My consent was...well it was injustice. There was nothing else I could do. I was locked up in hospital. I didn’t have a solicitor. I lost my contact months ago because (social services) pushed on the court the idea I was going to damage her (baby). I thought I was bad anyway, not good enough to be her mum. That’s why I consented, not because I was informed properly. No one sat down with me and explained what other options I had like the right to refuse to consent’.

Nica consented to her children’s placement. She experienced the ambivalence of guilt that she had rejected her children coupled with feeling obliged to consent. She was advised that delay would cause her children harm and that they needed permanence. She said she was driven to consent by the wish for her children not to suffer in care, but to be settled in a family. This was far removed from Nica’s ultimate wish to address her problems and regain the care of her children. She recalled that no consequences of giving consent were explained to her, she did not know that her regular contact with her children would cease.<sup>10</sup> Nica signed the consent form,

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<sup>10</sup> The effect of a placement order is that the expectation of contact with a child under the CA 1989 ends.

‘Sitting in the (court official) woman’s car with her, in a car park where she told me to meet her, she showed me their birth certificates and told me to sign and that was it’.

It is likely that this would not be considered as best practice where obtaining parental consent is concerned, as Allen notes ‘this process of witnessing forms was at one point described by the government as amounting to court consideration of the nature of consent, a safeguard for birth parents’.<sup>11</sup>

Cassie said that she consented to her child’s placement because she was promised ‘regular letters and photos from the adoptive family’ if she avoided the long process of contesting the placement. Cassie did not seek legal advice before agreeing to placement. She explained that she ‘had no fight left after care proceedings and just wanted an end to it’. Cassie was not provided with written confirmation of this promise before her consent was obtained by a court appointed officer. In contrast to these experiences Katie consented to her child’s placement autonomously. She felt the only way her child would ever be safe from her violent ex-partner was if she were adopted, she confirmed that,

‘It was informed, and I gave it freely, well on my solicitor’s advice, but you know it felt like it was right. I consented for her, not for me. I owed it to her to let her go’.

Katie fears that her ex-partner will try to find her when he is released from prison and for this reason she ‘lives in hiding’ relieved that she does not have to worry about her child. Katie did not discuss whether prior to consenting, she was helped or supported to keep her child and escape her partner’s violence.

Except for Katie, who felt she was correctly advised by her solicitor, the other birth mothers said little or nothing was explained to them in respect of the

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<sup>11</sup> Allen, (2003), p.80.

procedure or the legal implications of giving consent. They recalled that following the giving of consent, they heard nothing more from the professionals involved with them and their children. The respondents were vulnerable at the time of giving their consent and were not advised to seek legal advice. It seems that *prima facie* the statutory requirements for consent were met, but on deeper analysis, it appears that the giving of consent followed subtle pressure in coercive verbal statements, emotional blackmail or in the 'bargains' or promises made to birth mothers. This coupled with the lack of information and weak safeguards for mothers has significant implications given the seriousness of what was at stake. Where the previously discussed human rights safeguards for parents are concerned, according to Lord Nicholls if a birth mother consents to adoption there is no infringement of her ECHR Article 8 rights.<sup>12</sup> This means that in principle, neither Gill, Nica, Cassie nor Katie had any protection under the HRA. Although this small number of birth mothers cannot be argued as representative, from their accounts the seriousness of giving up their legal rights to their child was somewhat downplayed by the professionals involved. This subsequently meant these women did not at the time appreciate the finality of their actions in respect of their relationships with their children.

### **5.3. BIRTH MOTHERS WHOSE CONSENT TO PLACEMENT/ADOPTION WAS DISPENSED WITH**

In circumstances where birth parents refuse or are unable to consent to their child's placement, the courts can make a placement order. Section 21(3) provides that,

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<sup>12</sup> *Re B (Adoption by One Natural Parent to the Exclusion of Other)* [2001] 1 FLR 589 para 29.

‘The court may only make a placement order if, in the case of each parent or guardian of the child, the court is satisfied (a) that the parent or guardian has consented to the child being placed for adoption with any prospective adopters who may be chosen by the local authority and has not withdrawn the consent, or (b) that the parent’s or guardian’s consent should be dispensed with.’<sup>13</sup>

The paramountcy of the child’s welfare<sup>14</sup> and the welfare checklist<sup>15</sup> are pertinent to the dispensing of consent. In *Re P*<sup>16</sup> the Court of Appeal held that cogent justification must exist before consent can be dispensed with and adoption must be a proportionate and legitimate response.<sup>17</sup> In *Re B*<sup>18</sup> Lord Neuberger asserted that the ‘adoption of a child against her parents’ wishes should only be contemplated as a last resort, when all else fails’.<sup>19</sup> Bridge and Swindells argue that in extending the welfare principle to dispensing with parental consent ‘the court is able to completely override a parents wishes, even though they may be reasonable and notwithstanding that adoption involves irreversible legal separation legal separation of the child from his birth parents’.<sup>20</sup>

Twenty birth mothers<sup>21</sup> had their consent dispensed with by the court. Those who were aware of the local authorities’ application for placement opposed it from the time they knew of the plan for adoption. Around half of those said that on reflection they understood that their child’s welfare was the reason why this was done, but they had not necessarily appreciated this at the time. One birth mother was not

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<sup>13</sup> The child’s welfare requiring consent to be dispensed with is the statutory test under ACA s52(1)(b). Note: the word *requires* for the purposes of the act carries the connotation of ‘imperative’.

<sup>14</sup> ACA 2002 s1(2).

<sup>15</sup> ACA 2002 s1(4).

<sup>16</sup> *Re P (A Child)* [2008] EWCA Civ 535.

<sup>17</sup> Standley (2010), p.441.

<sup>18</sup> *Re B (A Child) (Care Proceedings: Appeal)* [2013] UKSC 33.

<sup>19</sup> para 104.

<sup>20</sup> Bridge (2003), p.112.

<sup>21</sup> Six respondents could not remember whether they consented or not.

physically able to consent because she was in hospital under sedation.<sup>22</sup> Seven said they did not understand why or how their consent was dispensed with. On further questioning they did not recall their solicitors or any other professional explaining consent to them and how it could be overridden, but in a number of cases they were 'encouraged' to consent by their solicitors.<sup>23</sup> A great deal of confusion was evident in a number of interviews about the final care and placement orders. Over half of the respondents spoke of being actively involved in opposing care orders and attempting to secure more frequent contact with their children at the time placement orders were made.<sup>24</sup> They failed to grasp the finality of the placement order, believing that the 'fight wasn't over until the adoption order',<sup>25</sup> but for many the placement order signified the end of their relationships with their children.

This lack of understanding of the legal process could explain why so many birth mothers used the term 'forced adoption' in their narrative. Although this is a familiar term often found in academic articles<sup>26</sup> and in the media, I wanted to explore what birth mothers meant when they used it. What personal significance, if any, was attached to this graphic phrase; one that suggested a violent act of removing a child from its parent and adopting it whilst the parent stood by powerless to intervene. Indeed 'forced' is defined in the dictionary 'as obtained or

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<sup>22</sup> ACA 2002 s52(1)(a) the parent or guardian is incapable of giving consent.

<sup>23</sup> This finding concurs with Lauren Devine's research where it was found that many lawyers seem do little more than 'urge compliance' once the evidence against parents has been collected. Devine, L, Parker, S., Public Family Law cases in the context of Miscarriages of Justice (2015) *Argument & Critique*.

<sup>24</sup> Similar findings were made by Charlton (1998), p.40.

<sup>25</sup> Tracy BM32.

<sup>26</sup> See Ryburn, M., 'The Effects of an Adversarial Process on Adoption Decisions' (1993) 17 *Adoption and Fostering* pp.39-45.

imposed by coercion or physical power'.<sup>27</sup> For the birth mothers this definition corresponds with their personal perspectives of forced adoption. Respondents' narratives were notably similar and dominated by references to the involuntary nature of their experience,

'As soon as the social worker said they wanted adoption we knew it was going to be forced through whatever we did'<sup>28</sup>.

'The social worker told me court would support adoption, so I may as well agree to consent, and this was months before they did a permanence plan. I said no (to consenting) and she just shook her head at me'<sup>29</sup>.

'It was violent; when the police smashed my front door and took them, to the time they were adopted, with us not being told how or why, I can't explain it any other way. It's forced because parents can't do anything, social services hold all the power'.<sup>30</sup>

'C was adopted when I was sectioned'.<sup>31</sup> I was told one day by a nurse the adoption had gone through, I had no idea they had that kind of power, parents have no rights and no say in their child's future'.<sup>32</sup>

'When they went in to care everyone was talking about our rights, to contact, to fight the care order, to go to LAC reviews, but in the background, there was this clock ticking, my solicitor mentioned adoption at the very first care hearing, like she was warning me to be aware, be alert, that they are already thinking about adoption. This is the way you know; care orders may as well be 'pre-adoption orders'.<sup>33</sup>

Jessica described the powerlessness she felt when her child was adopted; 'I didn't have no rights to fight, in adoption mums don't get any say, they say they're being adopted now go away'. Sita felt that the court process was pointless 'social services forced my child's adoption through the courts, the judge hardly even looked at the evidence in support of my parenting'.

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<sup>27</sup> The Oxford Dictionary, <https://goo.gl/A7gJqC>, (Accessed 18 Nov 17).

<sup>28</sup> Becky BM3.

<sup>29</sup> Amy BM1.

<sup>30</sup> Roxy BM27.

<sup>31</sup> Detained in hospital under the Mental Health Act 1983.

<sup>32</sup> Michelle BM22.

<sup>33</sup> L (Activist typology).

These Birth mothers perceived local authority children's services as immensely powerful bodies who could override any argument not in support of their child's adoption. Conversely some commented that judges seemed weak in comparison to local authorities because of their seeming acquiescence towards the adoption plan. They felt that the courts were nothing more than a venue for their powerlessness and humiliation to be aired in public as opposed to an impartial safeguard for their rights.

The birth mothers were asked 'why did you decide not to consent?'. Respondents concurred that they held the hope that there was a chance, a possibility, no matter how minute, that they would 'win the case'<sup>34</sup> and have their children returned. Their position was one of never giving up. Even when it was clear that their children were going to be adopted, most birth mothers struggled to accept it and continued for some time 'expecting a miracle to happen'.<sup>35</sup> Refusing to consent is therefore likely to be as much about denial of the reality as it is hopefulness that the adoption will not occur, and they will be reunited with their children. Because the only legal requirement for dispensing with parental consent is a determination of the child's welfare it is probable that birth mothers' perspectives of forced adoption will remain for as long as the law maintains such a provision. Their perception of forced adoption is likely to be a bi-product of the law which was intended to prevent the court prioritising the rights of birth parents over children needing permanence.

#### **5.4. BIRTH MOTHERS' EXPERIENCES OF BEING IN COURT**

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<sup>34</sup> Roxy BM27.

<sup>35</sup> Tracy BM32.

All 32 participants confirmed they had received legal aid and had legal representation whilst their children's care proceedings were ongoing, although around six respondents dismissed their solicitor because they were unhappy with the advice and continued to attend court unrepresented. Most of the birth mothers believed that placement orders were made during or immediately following the final care order hearing but there was a great deal of uncertainty.

Around half of the birth mothers had little or no experience of being in court. This was due to some staying in psychiatric hospitals, often a long distance away from the court dealing with the proceedings. A small number of mothers were in drug/alcohol rehabilitation centres and a smaller number simply felt unable to attend. The remaining half attended court for care proceedings and later to try and challenge the final care/placement orders.<sup>36</sup> Two birth mothers appealed to the High Court and attempted to represent themselves. It was not surprising to learn that all the applications for leave to oppose placement orders failed. Not only is the test for leave restrictive with little prospect of success under the authority of *Re A*<sup>37</sup>, *P (A Child)*<sup>38</sup> and *Warwickshire County Council v M*<sup>39</sup>, but the Legal Services Commission were and still are reluctant to provide parents with funding for such applications.<sup>40</sup>

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<sup>36</sup> Revocation or a placement order can be applied for under s24. Leave must be granted by the court and the child must not have been placed for adoption. Leave will only be granted where there has been a change of circumstances since order was made.

<sup>37</sup> *Re A (A Minor)* [2007] EWCA Civ 1383. The test being that a birth parent must show a change of circumstances sufficient to have a real prospect of success.

<sup>38</sup> *P (A Child)* [2007] EWCA (Civ 1265 [2007] All ER (D) 475). Even where parents had made progress the improvements were 'work in progress to applauded but not crowned' thus leave no granted.

<sup>39</sup> *Warwickshire County Council v M* [2007] EWCA Civ 1084. Where leave was granted to mother because she had shown a change of circumstances, but the CA withdrew leave on the basis she would have 'no real prospect' of opposing the placement orders.

<sup>40</sup> Moss, F., 'Family: A Social Panacea?' (2009) 159 *New Law Journal* 364 at p.366.



Most of the birth mothers' accounts of court proceedings were confused and ill-defined; they could not remember which orders the local authority had applied for, and whether they were contesting the making of a placement order or applying to revoke it. They were asked why they felt there was so much uncertainty around these recollections. Most suggested that the length of time that had passed since the proceedings meant their memories had become vague. This is interesting, because the same respondents could recall other, often earlier events such as meetings with social workers, conversations with professionals and incidents which led to the adoption in graphic detail. What linked the narratives here were the similar descriptions of experiencing court as traumatic but in very vague terms. Therefore, it is possible that the birth mothers have repressed their memories of court to manage the symptoms of trauma. This means that from many different traumatic events which were described vividly, including domestic violence, the physical removal of children from home and being compulsorily detained in hospital, the experience of being in the family court was the most traumatic event the birth mothers' experienced.

Van der Kolk and Fisler explain that 'trauma is an inescapably stressful event that overwhelms people's coping mechanisms and results in implicating dissociative processes as the central pathogenic mechanisms that give rise to PTSD'. They go on to suggest 'traumatic memories are retrieved, at least initially, in the form of dissociated mental imprints of sensory and affective elements of the traumatic experience'.<sup>41</sup> This theory denotes respondents' recollections of the court experience, because although their memories of proceedings were fragmented

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<sup>41</sup> Van der Kolk, B, A., Fisler, R., *Dissociation & the Fragmentary Nature of Traumatic Memories: Overview & Exploratory Study*, HRI Trauma Centre, 227 Babcock Street Brookline, MA 02146, <https://goo.gl/1tcrrq> (Accessed 13 May 2017).

and sketchy, the sensory elements, the sights and sounds, were strongly projected in the narratives as were powerful emotions.

Roxy felt the procedure was overly combative,

'I felt like I was facing a jury, like I was a criminal. Not one of them addressed me directly but spoke to me through my solicitor. I wasn't even worth speaking to'.

Talking about the professionals involved in her child's placement proceedings

Karis recalled that their focus was upon condemning her as a person rather than assessing her parenting capacity,

'Mostly I remember they don't make no eye contact. They talk (about) legal stuff and you're expected to understand it. In front of the judge they take it in turns to put you down. You go in full of hope and listen to the terrible things they say about you. You're already in the gutter. I don't know why they feel they have to rip you to shreds'.

Paige was escorted to court by a nurse because she was in a mental health unit at the time of proceedings. She recalled being treated,

'like a mad woman. When you go to court with a nurse they are gonna (sic) think of you and treat you like you're mad, but you're not mad you are ill. The social worker and the guardian were asking for a security guard to stand in the court in case I attacked them, but I've never been violent in my life'.

Karis and Paige's accounts were primarily expressed in the third person perspective with limited references to the experience as first person. Ayduk and Kross found that recalling traumatic experiences in the third person significantly reduced the levels of stress and emotional pain felt by the narrator.<sup>42</sup> This strengthens the indication that the court process traumatised birth mothers more than other events. Secondary analysis of the data revealed that experiences of

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<sup>42</sup> Ayduk, O, Kross, E., 'From a Distance: Implications of spontaneous self-distancing for adaptive self-reflection,' (2010) 98 *Personality Processes and Individual Differences* 809 at p.829.

court were the only section where birth mothers described their experiences in the third person. Even for those respondents who were self-reflective, the distress of the court experience was perceptible. Mandy felt disempowered to the point that she could not cope with the ordeal of placement proceedings,

‘I couldn’t walk into that courtroom. I stayed in the loo until the usher came and got me. I was treated like a stranger to my children, like I wasn’t their mum any more. They (local authority) told the judge my life story like they knew it, but they didn’t. It was like they forgot it was about the children, it was a personal attack on me. I ran out of there thinking ‘never again’.

Sara’s consent to adoption was dispensed with despite her oppositions to placement. She had been certain that her child would be returned to her because of successful contact sessions. She was devastated when her child’s adoption order was made. She found it impossible to accept that she had no right to contest the order,

‘I tried to appeal the adoption. I tried to get a pro bono, but in the end, I went on my own. I told them I wanted to make an application to see the judge. Security kept escorting me out. After I went there about ten times the judge who made the adoption order made an (anti-harassment) injunction banning me from harassing the court staff. That’s it, yeah, the end. I had to somehow face I wasn’t his mum anymore, but I couldn’t face the truth. I broke the injunction cause (sic) I waited outside the court and he (judge) sent me to prison’.

Often birth mothers had no understanding of the court procedure. Tracy recalled ‘I didn’t understand when the barrister kept referring to the local authorities’ skeleton argument no one explained it, and they should of because it was all about me and my apparent risk of being schizophrenic’. Cece remained angry about the way she was treated in court. She felt that that she was invisible to the judge, and all the evidence she had to support her case against her child’s placement was ignored in favour of the local authority’s argument. She believed that whatever she said or did, nothing would have changed the adoption. Throughout the interview Cece continually questioned how the legal system could

be fair when it would not allow her to have a voice. In addition to having no right to speak, some respondents commented on the way they were suppressed from showing any feelings. Many were warned that crying would not help their case; Rachel observed 'there's no room for emotions in a court of law'.

Lindsay was suffering from psychosis when she attempted to represent herself during final care and placement proceedings,

'I didn't really know what I was doing there, I thought it was for contact and I was desperate to see the kids. I thought the social worker, the barrister and guardian, the solicitors were all against me. It went on and on with me getting more paranoid by the day, arguing with the social workers and the judge. I should never have been there, why they let this go on I will never know. I had photos of the kids on the bench. I was staring at these cold and emotionless faces, all saying 'we told you she can't have her kids back, here's the proof'. Looking back, I wish that someone had stopped me from going, it would have been kinder to everyone'.

Overall the birth mothers experienced court as a frightening, judgmental, lonely and confusing place. They felt that 'no one was on their side'<sup>43</sup> with some commenting that even their solicitors were participants in the clique of professionals who only conversed with them when it was necessary. The lack of support offered to the respondents in court is painfully apparent in the data. Apart from their solicitor, who must always maintain a professional distance to their clients, the only other support appeared to come from family or friends or staff from hospitals at which some respondents were inpatients during proceedings. Women with no support found themselves alone in court for hours, days or weeks with no support at all, while they tried to fight for their children. The subject of suicide was raised by eleven respondents and four attempted suicide in the period following the court hearings. Charlton argues that helping agencies must

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<sup>43</sup> Emma BM8.

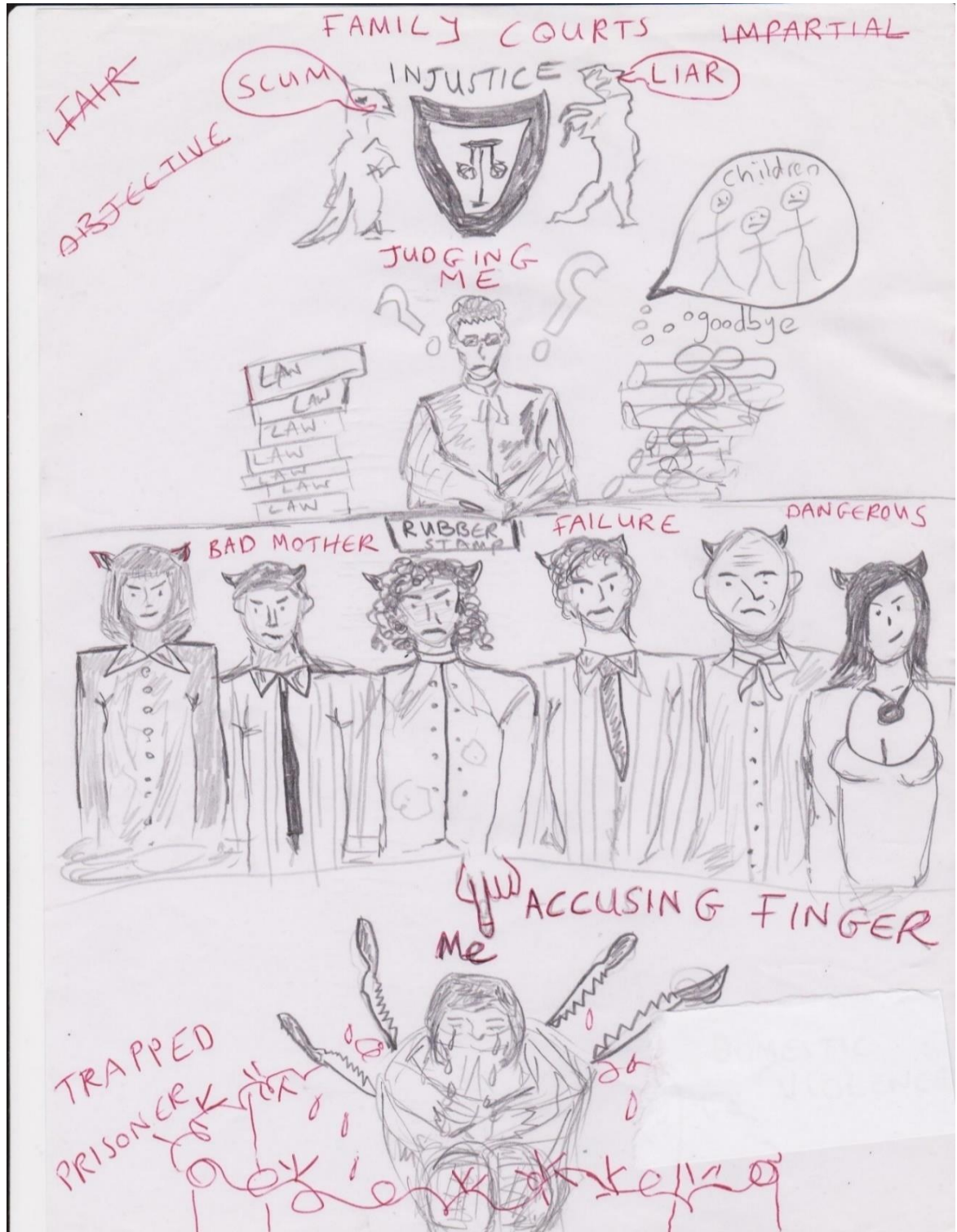
be more aware that many birth parents deal with their pain by suicidal actions as a reaction to the legal proceedings.<sup>44</sup>

The findings indicate that respondents experienced court as the most traumatic element of the whole process. It is possible that during proceedings, the pivotal moment occurs; this was the moment when they realise they have physically and permanently lost their children, something they may have previously denied. It is therefore understandable that court is the most traumatic element of the whole process which drove some respondents to feel like suicide was preferable to dealing with the trauma.

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<sup>44</sup> Charlton (1998) p.77.

Lucy is a respondent who has limited communication skills. This drawing is her interpretation of her court experience which she created during an art therapy session.



## 5.5. TERMINATING CONTACT BETWEEN BIRTH MOTHERS AND THEIR CHILDREN

When a child is in the care of the local authority before a placement order has been made, the local authority is required to allow appropriate contact between the child and birth parents and 'give due consideration to their wishes' when making decisions about the child, including contact arrangements.<sup>45</sup> This duty ends when the child is placed with consent or the court dispenses with parental consent and makes a placement order. Before making a placement order the court is required to consider the arrangements for contact between the child and the birth family.<sup>46</sup> Further, In *Re M*<sup>47</sup> Wilson J acknowledged the essential emotional need of every child to have the right to a continuing relationship with his natural parents. Arrangements can continue if the adopters agree, and the court issuing a placement order can make an order under s26 ACA to regulate contact arrangements before an adoption order is made, but the court will make an order for contact in only exceptional circumstances (*Re C*).<sup>48</sup>

Regulation 46(5) AAR requires that the local authority, when deciding to place a child for adoption, must consider what arrangements it should make for allowing any person contact with the child post placement. Cafcass have issued further guidance on contact which states, 'Before the court makes a Placement Order, a crucial role for the Children's Guardian is to make sure that sufficient

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<sup>45</sup> CA 1989 s34.

<sup>46</sup> ACA 2002 s26, s27(4).

<sup>47</sup> *Re M (Contact: Welfare Test)* [1995] 1 FLR 274 at 278G-H.

<sup>48</sup> *Re C (A Minor) (Adoption: Conditions)* [1988] 1 All ER 705.

consideration has been given to contact arrangements which are in the interests of the child for the duration of the Placement Order'.<sup>49</sup>

The participants were asked if they had direct contact their children during or after placement order proceedings but prior to the adoption. Only two birth mothers said that they were still able to see their child after a placement order had been made because it was considered to be in their children's best interests and adopters had not been identified. Seventeen birth mothers said that contact was stopped unexpectedly either in the weeks before the placement order or shortly afterwards. The remaining 13 birth mothers were unsure at what stage of proceedings their contact stopped at. Where contact was stopped abruptly, with gaps of several weeks between the last contact and a goodbye meeting (if there was one), respondents reported feeling distressed, confused and unprepared to see their child for the last time. Birth mothers who knew why contact had stopped said that either social workers advised them that contact was too upsetting for the children or that the children were getting to know their new families and allowing contact risked disrupting these relationships. This finding is unsurprising in the light of the court's view on terminating contact. In *Re KD*<sup>50</sup> and *Re B*<sup>51</sup> the courts approved termination of contact prior to adoption because the welfare of the child required it.

Seven respondents attempted to challenge the decision to stop contact but all were unsuccessful in their applications. A theme emerged in the results that birth

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<sup>49</sup>Cafcass, Guidance for Placement Proceedings,(2011), <https://goo.gl/8YfERf> (Accessed 19 Nov 2017).

<sup>50</sup> *Re KD* [1988] 1 All ER 577.

<sup>51</sup> *B (Minors) (Termination of contact: Paramount Consideration)* [1993] 3 All ER 524.



mothers felt that no consideration was given towards contact, neither by the courts or the local authority. This is illustrated by Jane's experience,

'I made an application to the court about our article 8 right to family life when they just stopped our contact so sudden with no explanation. It wasn't even looked at, no judge looked at it, at the final hearing I was told to 'shut up about your right to family life you don't have a right'.

I asked Jane 'who told you to shut up?' she replied, 'my children's solicitor'.

Birth mothers felt that the focus fell entirely on securing their children in adoptive placements, even where continuing contact had been argued as in children's best interests.<sup>52</sup> Some felt that there was a culture of caution and reluctance around allowing placed children and their birth parents to continue having contact. There was little evidence in the findings of agencies working within the mandatory requirement under the AAR regulation 31(1) and (2) where contact during the placement period should be addressed carefully by the local authority in full consultation with all parties including the birth family.<sup>53</sup> The general theme showed that once a placement order had been obtained or placement was consented to, contact was quickly reduced or stopped. None of the birth mothers were consulted about contact post-placement. Most were advised contact would stop but a small number were not told and contact simply ceased around the time the order was made. Of those who enquired, some were advised they would hear from the local authority about a goodbye contact in due course, but none could recall this being honoured.

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<sup>52</sup> By their solicitors or the guardian/independent witness.

<sup>53</sup> Allen (2003), p.81.

## 5.6. GOODBYE MEETINGS

If ongoing face to face contact is not part of the permanence plan, birth families may be invited to a 'goodbye meeting' with their child. This is not a legal requirement, but it should not be considered as unimportant because of this,

'The goodbye meeting' is a term for something that is inevitably distressing for a parent, some agencies use the term a 'wish you well in your new family' meeting which avoids the distressing finality of 'goodbye'. Whatever they are called, these are important meetings and most birth parents find the strength to go through with them'.<sup>54</sup>

The Government have produced guidance for local authorities on helping birth families prepare for the goodbye meeting, which aims to support both parents and their children; the importance of this meeting to children's welfare is made evident,

'The Social Worker reinforces the important role the parent has played in the child's life. Emphasize that because of the child's love for the parent, it is important for the parent to give the child "permission" to be happy and to love and trust another family;

And,

This is the most crucial part of the "goodbye" visit, as children are less likely to disrupt from an adoptive placement if the birth family has given "permission"; and, 'The Social Worker discusses with the birth parent whether there are special things they would like to do at the last visit such as sharing family pictures, telling the child the story of his birth or early childhood, or bringing keepsakes that have special meaning to the child/parent'.<sup>55</sup>

Six birth mothers, three of whom were inpatients in hospital, said they were not offered the chance to have a final contact meeting. This meant these mothers were unable to say goodbye to their children before they were adopted. When asked if they knew why this had happened three respondents thought their

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<sup>54</sup> Family Lives, *Support for parents of children with an adoption plan, placed for adoption or adopted*, <https://goo.gl/Pa5R4D> (accessed 13 May 2017).

<sup>55</sup> Tip Sheet, *Preparing for the "goodbye" visit*, <https://goo.gl/jEizS2> (Accessed 19 Nov 17) see appendix.

children had already been moved to another area some distance away. Dani explained that she had been told hospital was an inappropriate setting for her child to visit despite there being a family room where other children visited their parents. Three birth mothers were expecting a goodbye meeting which had been planned but this was cancelled due to concerns about the children's ability to cope with the meeting. Soma, whose goodbye meeting was cancelled, discovered later that her children who were to be adopted separately, had been taken to say goodbye to each other without her knowledge. She felt acutely distressed by this and although this event occurred six years previously, several times during the interview she articulated fears that her children may have felt distraught and were treated insensitively without her being there to comfort them. Rosie recalled her feelings of helplessness when her goodbye contact was cancelled,

‘I must have rung 10 times desperate (sic) trying to get another date because I knew it was the last time.... I spoke to my old solicitor who said there was nothing she could do. I was powerless. I couldn't do one thing to make them stand by their promise’.

Most birth mothers who had a goodbye meeting with their children found the experience intensely painful and unnatural. This was largely because they were told to behave as though they were happy and pleased for their child, but in doing that they feared that their children may perceive it as rejection. The respondents were worried about their children's feelings during the goodbye meeting so denied their own emotional needs ‘losing the children nearly killed me, I can't imagine how it must have felt for them’.<sup>56</sup> Gill was given only one day's notice that contact would be the last one she would have. She had no time to prepare and

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<sup>56</sup> Cassie BM4.

because she was heavily medicated she barely recalled the last hour she spent with her baby.

A number of birth mothers felt that goodbye meetings assumed a funeral-like atmosphere and were not the happy event that social workers tried to create. Louisa's goodbye meeting with her child was organised so that her own mother and father could also attend. Neither she nor her family had come to terms with the adoption. Louisa said she felt,

'devastated; we put on a brave face for C, making small talk with the contact supervisor, C was clinging on to me, she sensed something was wrong. It was like a bad dream only I didn't wake up and find out it wasn't real. Afterwards we went home, and mum made tea, it was like a burial had taken place...like C had died. But there wasn't no sympathy cards, we were just expected to pick up the pieces and carry on'.

Saying goodbye to your child is reminiscent of immediate bereavement, this is evident in Karen's story,

'After the final contact I walked back to the refuge, it was 6 miles or so. I didn't have no coat when I got back I was frozen. I went to bed and slept for 2 days. Then just crying. X (support worker) called the doctor out and he offered me lorazepam or something. The next day I felt like they were dead, or my heart had been ripped out. I literally couldn't move for days. I'm never going to see them again. I wanted to never wake up (....) ...it took a long time for me to be human again. My counsellor kept saying 'don't give up, keep going for you and your children'.

Karis's goodbye meeting was part of a gradual decrease in contact with her child, she recalled,

'I held him, but he smelled different to how I remembered. He had lost his baby smell. He didn't understand. I accidentally said, 'see you soon'. The social worker carried him out and he was doing that little starfish wave, you know that little fat hand wave that toddlers do. Saying 'ta-ta' but he hadn't learned to say mummy yet. Even though they prepared me for saying goodbye I was never able to deal with it emotionally I still haven't five years later, all that goes around in my head is that he didn't realise that day he wouldn't see me again'.

Amy felt that goodbye meetings are not intended for children's welfare but for social workers who, she said,

'force goodbyes on families with fingers crossed that it's gonna (sic) be the last time you see your baby and the adoption lasts forever. Be a good girl and say bye to your kid...it's not real. It's their made-up world'.

Amy explained that two years after this meeting her child's adoption broke down and she has since sought legal advice to apply for contact with her child who lives with foster carers.<sup>57</sup> Sita felt the goodbye meeting was something symbolic intended to demonstrate that children had 'got over' their birth mothers.

All the birth mothers who attended goodbye meetings saw their children at venues arranged by their local authority. Sometimes these were local contact centres but there were also public 'soft play areas' or indoor play areas attached to public houses. One meeting was arranged in a busy café and another in a town centre park. Some birth mothers remained angry that they were expected to say goodbye to their children in such public places surrounded by 'normal' families and their children 'it was like the ultimate punishment'.<sup>58</sup> It is probable that these venues are deliberately chosen to avoid overly emotive reactions to such a difficult event. However, it could be argued that seeing their child for the last time in such impersonal settings is insensitive and unfair to birth mothers and to their children. There should be sensitivity shown towards mothers who are trying to cope with the psychological impact of saying goodbye to their children. This is not a natural process but an engineered one and thus it is not something a birth mother or indeed a child will find easy to adapt to and behave as they have been

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<sup>57</sup> Where an adoption has broken down the court will not revoke the adoption order but will make a care order, so the child can return to care of the local authority. Harris-Short (2015), p.908.

<sup>58</sup> Amy BM1.

told to by professionals. This is something Paige found impossible to do at her goodbye meeting,

‘I was told not to get emotional. They were 2 and 4 so they know something’s going on. I couldn’t stop crying so the SW wanted to cut it short she was saying; ‘if you can’t get yourself under control we’ll have to leave’. I was meant to get an hour but after 15 minutes she wanted to leave. I held the youngest I wouldn’t let him go then he started to cry, so they dragged him off me’.

There was evidence in the data that acts of compassion made a significant difference to birth mothers’ experiences.<sup>59</sup> Antonella described with gratitude how a social worker collected her for the final contact and took her to buy a gift for her children to give them during the meeting. Maria was given several hours alone with her children in a garden at her local community centre. She spoke with happiness about the goodbye meeting and the sensitivity shown by social workers that day. She now visits the garden regularly and has good memories of the day.

It should not be neglected that effective management of such meetings is likely to be challenging for social workers also, particularly given their obligation to consider the child’s needs first and foremost. However, most of the birth mothers felt that no specific support was offered to them before or during the last contact. In fact, the general view was that goodbye meetings were arranged reluctantly and this averseness to the event translated into an unsupportive and tense atmosphere where birth mothers were pressured to say goodbye to their children and leave. This meant that such an important meeting was a profoundly unpleasant and negative experience for some birth mothers and possibly for their children as well. Saying goodbye to one’s child can be devastating, but by

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<sup>59</sup> Although birth mothers believed these were acts of kindness. These actions could be argued as in keeping with the Government guidance on goodbye meetings.

showing sensitivity professionals will create a far more positive environment which may also promote better outcomes for the children they are placing with adopters. Birth mothers who were not offered the chance to say goodbye felt strongly that there was a lack of openness and no explanation why the meetings had not gone ahead. In something as important as saying goodbye to a child it is vital that birth mothers know where they stand with clear explanations provided if final contact are not facilitated.

### **5.7. BIRTH MOTHERS' INVOLVEMENT IN THE ADOPTION PROCESS**

Wherever possible birth parents should have a voice and be listened to during the process of their child's adoption. Boddy et al argue that 'birth families need to be engaged with the decision-making and care-planning process from the outset'.<sup>60</sup> MacFarlane notes the law requires that 'before a placement for adoption can occur a parent must be fully engaged in the decision-making process'.<sup>61</sup> Accordingly when making an adoption order the courts must apply the welfare checklist in section 1 ACA. Section 1(3)(f)(iii) provides that the courts must consider the wishes and feelings of the child's relatives. AAR regulation 14(1)(c) provides that adoption agencies must 'ascertain the wishes and feelings of the parent or guardian of the child'. Regulation 17 concerns the requirement to prepare the child's permanence report which includes, at Regulation 17(d), 'the wishes and feelings of the child's parent or guardian. According to para 12.8 of the NMS, the adoption agency must be active in its efforts to involve the birth family in the adoption planning. Standard 12.15 provides that the wishes and

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<sup>60</sup> Boddy, J, Statham, J, et al., *Beyond Contact: Work with families of children placed away from home in four European countries*, *Centre for Innovation and Research in Childhood and Youth (CIRCY) School of Education and Social Work*, (2013), <https://goo.gl/upcLTz> (Accessed 13 May 2017).

<sup>61</sup> McFarlane, A, Reardon, M., *Child Care and Adoption Law*, (2010), p.153.

feelings of the birth parents will be listened to, valued and respected and if not followed, reasons will be given why. Furthermore, in *Scott v UK*<sup>62</sup> it was held that once the child is in the care of the local authority and adoption is planned then the birth parents must be sufficiently involved in the planning process.

Birth mothers were asked if they felt the local authority or adoption agency sought to ascertain their wishes and feelings. They were also asked whether they felt sufficiently involved in the adoption planning process. Twenty six birth mothers said they felt that they were not involved in the planning process and they did not believe that their wishes and feelings were considered at any stage. In this context Karen had strong views on her lack of involvement and believed she had been subjected to discrimination,

‘I wasn’t involved. I have a learning disability, but they said I wasn’t allowed to make simple decisions. C’s were moved to the adopters and I wasn’t even told. What is so incredible is how society has changed in the way it treats people with learning disabilities but they (local authority) acted like it was 50 years ago when people like me were kept in institutions’.

Gill wished to have a say in who adopted her baby,

‘I wanted adopters who would love her and be honest. My fear was that the new (parent) would say I was a child abuser. I just wanted someone to be respectful and tell her the truth’.

Gill felt my questions, and the relevant law, were futile and carried no weight. She believed that her local authority, who claimed to respect birth parents’ wishes and feelings, could happily pay lip service and then do whatever they wished because parents had no power over the outcome. Similarly, Sita was asked if she had any views on her child’s adoption plan, she asked for her child to be adopted by a family from the same ethnic group as she and her child. This was important to

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<sup>62</sup> *Scott v United Kingdom* [2000] 1 FLR 958.



her because her child was her only living biological relative and she wanted his culture to be preserved. She was later told there were no adopters on the register who matched this group and her child was adopted by a white British family, something she finds difficult to accept.<sup>63</sup>

Rachel also dismissed the question with a realistic view 'the solicitor warned me it would only be about the C's welfare and it was, I had never mattered less in this world than during my children's adoption'.<sup>64</sup> Rachel's words unknowingly portray the realism of the law and the approach to parent's interests. The message to come from the Supreme Court in *Re B*<sup>65</sup> states clearly that it is only as a contributor to the child's welfare that parenthood assumes any significance.

In contrast Antonella and Jasmine felt that their wishes and feelings were accounted for, particularly where adoptive parents were concerned. Both respondents were consulted on the kind of people they would like their children to be adopted by and both felt that their views were valued. They felt that they had some ongoing and meaningful place in their children's lives through this small part they played. This contrasts with those women who were excluded from the process entirely. They felt unimportant, side-lined and in most cases no longer of any worth or value to their now adopted children. This in turn had negative implications for post-adoption contact because they felt their children would not want to know them, so they often failed to reply to contact letters from the adopters. Where birth mothers were given the opportunity to contribute positively

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<sup>63</sup> For a helpful summary of the debate on adoption and race/ethnicity see Welstead (2008), p.263.

<sup>64</sup> Rachel's view was chosen as the title of this thesis because it exemplifies the feelings of many of the respondents through the adoption process and particularly in court.

<sup>65</sup> *Re B (A child)* [2009] UKSC 5.

to their child's adoption plan they did so. This involvement had positive outcomes both in the way they viewed their child's adoption, the adoptive parents, and how they were able to manage their loss and grief and find some level of closure. Research has found that birth parents value the chance to 'have a say' and be treated respectfully,<sup>66</sup> but there was very little evidence of this in the findings.

## **THE EXPECTATION OF FAIR TREATMENT**

Standard 12.1 provides that 'Birth parents and birth families are treated fairly, without prejudice, openly and with respect. They are kept informed, on a regular basis, of the progress (or lack of progress) they are given regular opportunities to raise any specific concerns or questions, which are then answered as directly and fully as possible'. Most respondents felt they were treated unfairly and without openness. The question of respect was met with responses such as 'are you joking?' or 'I was the last person they would ever respect'. Birth mothers did not feel they were kept informed or up-to-date on the progress of their children's adoption. Around half said that their solicitors did their best to keep them informed about local authority's plans up to the point of placement. But afterwards, usually because their legal aid and thus their representation had ended at the point of final care/placement orders, birth mothers were 'in the dark'<sup>67</sup> about their children's circumstances. They heard little or nothing from the local authority again. Jessica discovered her children had been placed with adopters through her solicitor. He advised her to open a line of communication by writing a letter to her children's social worker detailing her favourite foods, her hobbies and things only she would know about them. She packed her children's soft toys and other

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<sup>66</sup> Mullender, A., (Ed), *Open Adoption the philosophy and the practice*, (1991), BAAF, p.60.

<sup>67</sup> Nica BM23.

precious things and took them to her local children's services where she said her box and letter 'was met with suspicion'. She requested the items be passed on to the social worker, but she never received an acknowledgment. She remains troubled, years later, that her children did not receive their possessions.

The difference in a birth mother's narrative who was kept up to date with the progress of her child's placement is discernible to the previous results,

'I knew when she was placed official (sic) with the foster family that kept her. I knew she was doing Ok because the social worker rang me and I saw C once a fortnight and she was gaining weight and smiling at me and laughing. I can say that the adoption was a fairly decent experience'.<sup>68</sup>

## **THE ENTITLEMENT TO A SUPPORT WORKER**

NMS 12.3. provides that 'Birth parents are given access to, and are actively encouraged to use, a support worker from the time adoption is identified as the plan for the child. The support worker is independent of the child's social worker'. Out of 32 birth mothers none could recall having been assigned a support worker by their local authority once their children were no longer in their care. Neither could any respondents differentiate between their child's social worker and an adoption social worker in respect of any support offered to them directly. Nica said 'why would they support me, I was the enemy, they never helped me'. I responded to Nica 'but these are professionals they are supposed to be neutral and non-judgmental'. Nica replied 'you're a birth mother aren't you? How did they treat you when your child was adopted?'

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<sup>68</sup> Katie BM16.

## **5.8. PROMOTING A POSITIVE IDENTITY, POTENTIAL AND VALUING DIVERSITY: THE LIFE STORY BOOK**

NMS Standard 2.2. provides that 'The adoption agency is active in its efforts, after the adoption order is made, to encourage and support the birth parents to give the child, via the adoption agency, updates on significant family information. Standards 2.5.to 2.7 concern the Life Story Book (LSB) which should be created by birth parent(s) under the coordination of a social worker. The purpose of the LSB is that 'Children have a positive self-view, emotional resilience and knowledge and understanding of their background'. One of the key principles behind open adoption is to 'encourage birth parents to share information about their family history and background with the adoptive family, with the possible inclusion of gifts or mementoes for the child'.<sup>69</sup> Therefore the provision of a meaningful LSB is significant to the interests of the child and depends on the involvement of birth parents.

Eight birth mothers said they were not given an opportunity to make an LSB. Three were asked to make photograph albums. The remaining birth mothers were asked to provide an LSB but three felt unable to do so. Katie refused because she acknowledged that her child's early life was not happy. She also feared that her child may try to seek her birth father at some point in the future, so she decided not to provide birth family information in an attempt to protect her child from potential future threat. Nica refused to make a LSB because she was too ashamed of failing her children to write about herself; a decision she later regretted.

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<sup>69</sup> Allen, (2003), p.21.

Rachel found the LSB process negative because she was pressured to provide information she was not comfortable with disclosing,

‘The SW sat opposite me with a pen and pad. He was ordering me to tell him my family tree, but I had no contact with my family. I was sexually abused by my dad and my mother blamed me. I cut them out of my life for my own and the kid’s safety. Now the SW’s saying if I didn’t provide the family info he would write it for me, how insensitive can a person be?’

Nicky was told to provide some baby photographs of her children, but she was not asked to write her own LSB, this was done by a local authority support worker.

Nicky was sent a copy of the finished book,

‘It broke my heart. X (support worker) had put a lot of crap in there. Most of the facts were wrong. I couldn’t accept it because this book will be my son’s and daughter’s guide if they decided to come and find me. C was only 3 months when she was taken, she will have no other memory than the book. For that I feel very angry, it’s that woman playing god...she had no right I can possibly see to write my story for my children’.

These respondents all concurred that the amount of information they were asked to provide their children was inadequate and inaccurate. They felt they had little or no control over the information that they were told would be shared with children by their adoptive parent(s). Further, some commented that they had little faith that any of the life story information would paint them in a realistic light.

Some experiences were more positive, with agencies clearly making efforts to involve birth mothers. Karen found writing a letter to her children challenging because of her learning disability, so a family support worker wrote for her whilst she dictated. Emma was given the opportunity to provide a letter and some photographs to the adopters so her children ‘would see that there were happy times’. Maria also wrote her children a letter about their past and she was grateful to receive a thank-you letter from the adopters. Birth mothers who received support and help to create a LSB, along with the autonomy to write and share

their own stories, found it was a positive experience and all were hopeful that the information would be shared with their children. For those that were not given the chance or who had no control over the information shared, there was bitterness and deep concern expressed about their children's understanding of their past. Overall the essence was one of the birth mothers fearing that their children will forget them or only know of them by negative, third-party hearsay.

## **5.9. POST ADOPTION COUNSELLING**

Little recent research has been done into post adoption services for birth mothers, yet women's lives will continue without their children, and therapy can be a necessity to equip them with the necessary life skills and emotional wellbeing. This is recognised in law, with provisions designed to support birth mothers in trying to rebuild their lives after adoption. The AAR Regulation 14 has the requirement to 'Provide counselling and information for the parent or guardian of the child. 14(1) states 'The adoption agency must, so far as is reasonably practicable (a) provide a counselling service for the parent or guardian of the child'. Additionally, ASS Regulation 4(2) provides that 'Counselling, advice and information must extend to (a) children who may be adopted, their parents and guardians'. NMS Standard 12.6 provides that 'birth parents will be supported with counselling to play an active part in their child's adoption'.

Twenty birth mothers confirmed that counselling was formally offered<sup>70</sup> to them by their local authority around the time of the adoption. Ten chose to decline it, for a number of reasons, the primary ones being: unable to face counselling so soon after adoption and not trusting professionals. There was no follow up

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<sup>70</sup> Birth mothers received a letter or a leaflet from the local authority adoption team advising them they were entitled to post adoption counselling.

communication from any local authority once respondents had refused counselling. Eight birth mothers accepted counselling from their local authorities. Numerous references were made to the counselling services After Adoption,<sup>71</sup> Action for Children<sup>72</sup> and PAC-UK<sup>73</sup>, who hold contracts with local authorities to provide services to birth families. It is of note that After Adoption and Action for Children are also adoption agencies. Four birth mothers received counselling from other agencies either as part of treatment for a mental health condition, via referral from her GP or from a similar voluntary service.

Seven respondents said they were certain that at no point during or after the adoption did their local authority offer them any counselling. At the time of the interviews these birth mothers had not received any form of counselling. The findings showed to some degree that they expressed greater levels of unresolved emotional distress. The respondents spoke of being unable to connect to or articulate their feelings, they 'held it all inside',<sup>74</sup> and could not grieve and move on with their lives. They found it difficult to accept that their child was adopted, they commonly suffered from depression, low self-esteem, self-blame and guilt. Sara whose child was adopted three years before the interview said,

'I try to keep busy all the time because this picture plays in my head, over and over on repeat, of C sitting on a mat crying, pining for me, not understanding why she's not with me. I torture myself with this every day'.

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<sup>71</sup> After Adoption, Professionals and Local Authorities, (2017).  
<http://www.afteradoption.org.uk/#top> (Accessed 19 Nov 2017).

<sup>72</sup> Action for Children, (2017), <https://www.actionforchildren.org.uk/> (Accessed 19 Nov 2017).

<sup>73</sup> PAC-UK Support Groups, (2017), <http://www.pac-uk.org/pac-uk-support-groups/> , (Accessed 19 Nov 2017).

<sup>74</sup> Sara BM29.

Claire refused counselling because she feared it may lead to happiness and she felt she did not deserve to be happy. She said she remained 'stuck' in the time that her children were with her,

'I sit in their room; it's been untouched for 6 years since they went. I stay in there for a few hours a day and sleep there at night, on the floor, so I don't disturb their beds. I think if I keep it like this they will come back'.

Karis described her living room

'it's a shrine to him. I have over 100 photos and 40 collages on display. I get upset looking at the pictures. Very emotional. It reminds me of our love, my sister thinks I am torturing myself but it's my only memory, if I pack them away I have left him in the past'.

These stories can be contrasted with the benefits birth mothers experienced from having counselling or therapy. A small number of respondents were provided with specialist treatments such as psychotherapy, interpersonal therapy, EMDR and Cognitive Behavioural Therapy (CBT).<sup>75</sup> These were provided as part of a treatment programme which was unconnected to the local authority. This treatment was available where respondents were inpatients in hospital or rehabilitation units. CBT appeared to be the most helpful, because it gave birth mothers the practical skills they needed to address a variety of problems. Some birth mothers spoke of the excellent long-term support they received from their local Women's Aid or women's refuge. Some services offered support by other birth mothers along with education as a drop-in service where domestic violence was an issue.

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<sup>75</sup> Interpersonal therapy is a structured, time-limited therapy that typically works intensely on established interpersonal issues, Interpersonal Therapy, *Counselling Directory*, (2017), <https://goo.gl/c8bYsk> Eye Movement Desensitisation Reprocessing (more commonly known as EMDR), is a form of psychotherapy developed in the 1980s by American psychologist Francine Shapiro. Eye movement desensitisation and reprocessing (EMDR), *Counselling Directory*, (2017), <https://goo.gl/rvn4q3> Cognitive behavioural therapy (CBT) combines two different approaches for a practical and solution-focused therapy. The therapy is very active by nature. Cognitive behavioural therapy, *Counselling Directory*, (2017), <https://goo.gl/E4nUAj> (Accessed 19 Nov 2017).



A common theme amongst respondents who had counselling was the hindsight that they should not blame themselves for a partner's violence, coupled with the realization that they could have taken their children and left the violent relationship if they had received enough support. Even those whose counselling was not focused on the loss of their child but on other issues such as empowerment to leave abusive relationships and behavioural therapy, the ripple effect resulted in stronger and more resilient women. The evidence for these findings was apparent in the participants' good self-esteem, their ability to manage problems in their lives and the refusal to enter into abusive relationships. Effective counselling allowed women to take control of their lives and of their interpersonal relationships, which in turn became more meaningful. This meant they could confidently parent subsequent children and form close emotional bonds.

It is not clear why seven birth mothers were not offered counselling despite the statutory requirement. All the local authorities in the FOI sample confirmed that they provided a counselling service offered to birth families unless there was an overriding reason not to. However, a post adoption counsellor advised me that in her local area there are only a limited number of counselling places available at any one time. This means once the maximum number of birth parents have accepted counselling, any remaining 'on the list' will not be offered it. This is due to a lack of funds and simply not enough counsellors to cover the number of birth parents needing therapy.<sup>76</sup>

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<sup>76</sup> Interview with 'Jan' 15 July 2016.

## SEARCHING

It is known that the urge to search for a missing child is a symptom of grief.<sup>77</sup>

Research has found that searching for a child placed for adoption is a common reaction in birth mothers, Logan describes,

‘The factor in the drive to search was not knowing what had happened to their child, whether he was alive or dead. The drive to search became, for some women, overwhelming and dominated their lives. The process of searching made heavy demands on their emotional and psychological resources’.<sup>78</sup>

Murray-Parks defines this process as ‘pining or yearning’<sup>79</sup> and this is the component of grief which triggers the urge to physically search which is sometimes uncontrollable and acted upon.

A number of birth mothers who had not received therapy or counselling spoke of searching for their adopted children. This searching did not manifest in them making active efforts to locate children online through social media accounts, rather it concerned physically searching their local area and sometimes much further away. There were suggestions of compulsive behaviour, but little logic involved in this searching, they were grasping at threads of knowledge gained during court proceedings or professionals’ meetings. For example, Sita knew a local foster carer had adopted her child so she walked the same route every Saturday in the radius where she thought the foster carer lived. Paige read in her contact letter that her children had visited a particular zoo. This compelled her to visit this zoo in the hope she may see her children, she had returned to the zoo, some 80 miles from her home, around 17 times in three years ‘just in case’. Karis

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<sup>77</sup> Society, the Individual and Medicine (2014), <https://goo.gl/NMeybV> (Accessed 4 Sept 2017).

<sup>78</sup> Logan (1996), p.620.

<sup>79</sup> Murray-Parkes, C, Prigerson, H, G., *Bereavement: Studies of Grief in Adult Life*, (2009), pp. 53-57.

believed that her child, adopted five years previously, had returned to her own childhood home, a place where as a child she was removed from her parents. She explained 'I know it's irrational to go 200 miles every year looking for him, but I feel as though he is there, or he has been there, I feel closer to him when I'm there'. Fiona's narrative illustrates the damaging effects of being unsupported when the urge to search takes over,

'The twins were adopted in June of that year. I walked 20 miles a day trying to find them, from one part of the city to the other. Every day for 3 months I walked around looking for them. I wore out shoes, flip flops. I had terrible blisters. I was sunburnt. I used to get 'leads' like where I thought I had seen them being pushed in a double buggy. I followed a woman in the shopping centre pushing twins cause (sic) I thought it was them, her bloke shouted abuse at me. I hung around nurseries and the police got called a couple of times. They felt sorry for me, they said I couldn't worry people, they thought I was gonna (sic) snatch a kid. I looked up the names of the people involved in the adoption in the phone book, even people with similar names. I went to their addresses just in case one of them had the twins.

Fiona reflected on that time,

'Looking back, I can see I was really ill, no one did anything to stop me or help me. I was forgotten. That last search day, it was pouring with rain. I lay down under a tree in the park and someone called an ambulance. I was taken to hospital; I was in there for 8 months'.

This narrative demonstrates the absolute need for support and care for birth mothers in the aftermath of adoption. If they refuse counselling, this should not be the precursor for abandonment by helping agencies. Those who do not accept counselling should at the very least be contacted regularly in the post adoption period, to ensure situations such as Fiona's are not spiralling to the point of their long-term hospitalization.

## **5.10. CONTACT WITH CHILDREN AFTER ADOPTION**

There has been a considerable amount of research into the phenomena of 'open adoption' in recent years,<sup>80</sup> although some commentators have argued that 'open

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<sup>80</sup> For a helpful guide on the concepts of open adoption see, Mullender (1991).

adoption' lacks a definitive meaning.<sup>81</sup> In 1990 the *Adoption Law Review*<sup>82</sup> considered open adoption. One of the key topics to emerge from the review is that of maintaining links by ongoing contact between a child and his birth parents after adoption<sup>83</sup>. Triseliotis suggests this should be considered as 'adoption with contact'.<sup>84</sup> Sloan describes open adoption as 'the freer exchange of information between the parties to adoption as an alternative to secrecy'.<sup>85</sup> From a human rights perspective, adoption without consent may become more compliant with the Convention if some contact is permitted between the child and his birth parents.<sup>86</sup> The issue of contact with adopted children is a complex and controversial issue. There is little provision in the ACA for contact following adoption,<sup>87</sup> although s 46(6) provides that the court 'must consider' whether the child's welfare requires ongoing contact.<sup>88</sup> Although the ACA makes allowances for contact, there is no presumption for contact as there is in the CA 1989.<sup>89</sup> Following an adoption order, an application for post adoption contact can be made under section 8 of the CA, but the applicant must first secure the leave of the court.<sup>90</sup>

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<sup>81</sup> Lindley, B., 'Partnership or Panic?' A Survey of Adoption Agency Practice on Working with Birth Families in the Adoption Process' (1998) 21(4) *The Journal of the Association of British Adoption and Fostering Agencies* 23 at p.23.

<sup>82</sup> *Prime Ministers Review: Adoption* (July 2000), para 6.5, John Hutton MP, Hansard, (House of Commons), 26 March 2001, col 699.

<sup>83</sup> Allen, (2003), p.21.

<sup>84</sup> Triseliotis, J., 'Open Adoption', in Mullender (1991), p23.

<sup>85</sup> Sloan (2014), p.340.

<sup>86</sup> Hale, B, Fortin, J., *Legal Issues in the Care and Treatment of Children with Mental Health Problems*, in Rutter., (Ed) *Rutter's Child and Adolescent Psychiatry*, (2008) p.102.

<sup>87</sup> McFarlane (2010) p.166.

<sup>88</sup> An application for post adoption contact can be made under section 8 of the CA 1989 but the applicant must first secure the leave of the court.

<sup>89</sup> Standley (2010), pp.441-442

<sup>90</sup> Since the adoptions in this thesis all occurred pre 2013 these provisions would have applied. However, the Children and Families Act 2014, section 9, has amended the Adoption and Children Act 2002, with the new insertion of section 51A and 51B. These

Contact following adoption can be either agreed during court proceedings or arranged between the local authority, the adoptive parents and the birth parents. It is rare for the court to make an order for post-adoption contact *inter alia* due to the fear of deterring adopters.<sup>91</sup> It is more likely to be a formal written agreement which is legally unenforceable if contact does not occur or ceases. Allen notes that the legislation does not demand ongoing contact and thus 'agencies have been able to develop policies and approaches largely unrestrained by a legal straightjacket'.<sup>92</sup> This policy usually transpires as 'letterbox contact'<sup>93</sup> in which the courts play no part. As one adoption service notes 'currently the letterbox arrangements are morally, rather than legally binding, so they depend on the goodwill of all those concerned to keep them going'.<sup>94</sup>

Letterbox contact is indirect and consists of periodic letters<sup>95</sup> passed between birth families and adoptive families via a local authority letterbox scheme. Sometimes post adoption contact includes physical contact between child and birth parents, but this is unusual. Post adoption contact has a significant body of research supporting it as a positive way for a child to be aware of their identity and make sense of what has happened to them.<sup>96</sup> Judith Masson views contact as 'a practical demonstration of a continuing relationship'.<sup>97</sup> Research also acknowledges that many adopted children will want ongoing contact with their

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new provisions now provide the court with a specific power to make an order for post-adoption contact when the court is making an adoption order or when an adoption order has been made.

<sup>91</sup> Ibid. p.442.

<sup>92</sup> Allen, N., (2003), p.21.

<sup>93</sup> Sloan (2014), p.41.

<sup>94</sup> Oxfordshire County Council, Guidelines for Using the Oxfordshire Letterbox Service, <https://goo.gl/WU3Jor> (Accessed 20 April 2017).

<sup>95</sup> Less often it may also include photos and gifts.

<sup>96</sup> Mullender (1991).

<sup>97</sup> Masson, J., 'Thinking About Contact-A Social or Legal Problem?' (2000) 12 *Child and Family Law Quarterly* 15 at p.15.

birth families,<sup>98</sup> and thus if it is in their best interests' local authorities and adopters should ensure it occurs. Post adoption contact is addressed under the NMS. Standard 8.1 provides that 'Initial contact arrangements are focused on the child's needs with the views of the prospective adopters and birth family members taken into account. The arrangements are reviewed in accordance with the adoption support plan.'

The birth mothers were asked about post adoption contact arrangements. The resulting data does not concern court ordered contact because none of the respondents were in possession of a contact order. All the contact was arranged by local authorities by way of various agreements made between parties. Three respondents were advised that the adoptive families had decided against allowing contact and none had attempted to challenge this. Twenty nine birth mothers were initially offered some level of post adoption contact, but it was clear from analysis of the data that theory on post adoption contact is discrete from the reality. Theoretically the literature offers an objective evaluation, leading one to assume that birth parents dutifully and impassively cooperate with reliable and regular post adoption contact.<sup>99</sup> In practice it is not that simple.

Collectively the findings showed an inconsistent and unreliable process that left birth mothers confused, concerned about their lack of rights, and powerless if agreements for contact were not kept. Only two birth mothers had received the anticipated number of letters post adoption. Seven birth mothers had spent a significant amount of time fruitlessly contacting local authorities querying why they had not received letters. None felt that their enquiries were taken seriously,

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<sup>98</sup> Lindley (1998), p.23.

<sup>99</sup> See Standley (2010), p.426.

and they were not resolved. General advice was given that local authorities were not involved in the agreement other than to pass letters on once the adoption was final, as Becky explained 'I was told I wasn't legally entitled to letterbox or an explanation as to why I hadn't had a reply to my letter'.

When a new management team took over when her local authority adoption service was placed on special measures, Gill discovered that the letterbox service had inexplicably withheld four years of letters addressed to her from the adopters. She received these letters unexpectedly one day with no explanation included. Amy's letterbox contact stopped without explanation. It took her a year to learn that her eldest child's adoption had broken down and he had returned to care. Amy felt angry that so much time was allowed to pass without her knowing the facts about the situation. She said that regardless of whether she was no longer legally related to her child, matters as serious as adoption breakdown should always be shared with birth parents where there was an agreement for indirect contact. Four birth mothers had their letters returned by the letterbox service with a slip advising them that they would not be passed on because inappropriate information had been shared. The information referred to included the child's first name, 'I love you', 'from mummy', and news about a new baby.

Tracy declined letterbox contact because she felt she could only manage the separation if she kept the memories of how her children were, rather than be reminded of them growing up. Cece had received some intermittent letterbox contact which she valued, but she felt unable to write back. She was told not to write 'I miss you' or 'I love you' in her letters. Cece felt that to not say those words meant she was no longer a mother to her children. She believed this would confuse her children who she feared would think she no longer loved them.

During placement proceedings Karis was told by her solicitor that the judge had noted her close relationship with her child and supported indirect contact, including the exchange of letters and regular updates. Adopters were sought who would be willing to allow such contact. Following placement an agreement was made with the adopters that twice-yearly contact would be honoured. When asked if this agreement had been kept Karis said that although she had received some letters it fell short of the agreement. She had received just two letters in five years.

Birth mothers were often unaware that contact arrangements were not legally enforceable.<sup>100</sup> Rosie was told she would receive an annual letter about her child. When she heard nothing for three years she visited a solicitor who advised her there was no legal action she could take; he suggested that the adopters had changed their minds. Rosie was left not knowing why no letters had arrived for her. She remained hopeful that she would one day receive a letter. She felt frustrated by the absence of certainty, asking 'could they (local authority) at least have told me that I wasn't going to get letters, then I could try and move on, not wait for the letter that never comes'.

In contrast, Jasmine was positive about her letterbox contact which she said was generous and included letters and a partially obscured school report. Antonella's case was unusual in that she was the only birth mother to have had direct physical contact with her adopted child. She had seen her child twice since the adoption and she has a good relationship with the foster carer who adopted her child 'we

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<sup>100</sup> Although it should be noted that in the event that adopters refuse to allow contact, a birth parent can apply under section 8 Children Act 1989 but they must first secure 'leave' of the court. A small number of birth mothers made enquiries to solicitors, in two cases applications were made to the court, but they were unsuccessful.



also send letters to each other. I write to her and the adopting mum writes back, and I had a little Christmas gift, just a candle, but it said, 'to mummy' it made me feel like my life was worth something'.

Post adoption contact matters to birth mothers probably more than any other party involved in adoption; yet they are the ones left knowing little or nothing about their child's wellbeing and progress. The data showed that letterbox was often promised and then denied by those empowered to provide it. What is particularly unfair is that rather than being advised letters were to stop, birth mothers were left uninformed, having no idea why they had never received letters or why letters had stopped arriving. This may have been an oversight in that the adopters had decided contact was not in their child's interests, but in their ignorance, the predominant belief some participants held was that their children had died. This belief went unconfirmed by local authorities in the event of the birth mothers seeking confirmation. However irrational it may seem, the idea that 'no contact' meant death was referred to many times, as Gill explained,

'Long before I had my letters, after three years of nothing, I assumed she must be dead, after all why else would it (letterbox) stop? The LA wouldn't answer my letters, so I had to accept she died, I had my own memorial service for her in the baby cemetery'.

Gill subsequently suffered from a period of intense emotional distress when she received her letters after four years. Being convinced their child has died would potentially cause problems if the adopted child seeks her birth parent at some point in the future.

### **BIRTH MOTHERS' FEELINGS ABOUT POST ADOPTION CONTACT**

Most birth mothers who had received some information about their children or who had ongoing contact were thankful towards the adopters. Dani said she felt

grateful that 'she (adoptive mother) says in her letters she encourages him to talk about his birth mum, she doesn't deny me and his past'. Roxy described how 'my life is better for knowing they are happy. They get holidays, new bikes, even a pony. I could never have given them that kind of life'. But there was also ambivalence. On one hand they were happy that their children were thriving, but on the other hand, letters triggered profound pain and grief along with other feelings such as guilt and anger. Some mothers admitted feeling betrayed by their children who could love others as their parents.

Respondents who received letters, however intermittent, agreed that any contact was better than none. Many of the birth mothers spent time trying to articulate their feelings about letterbox. Words that appeared in many interviews were: 'relief', 'gratitude', 'emptiness', 'confusion', 'unreal', 'torture'. Whilst most mothers agreed that knowledge about their child was very much wanted and often sought in the event of it not being received, this need was coupled with feelings of devastation and the resurgence of grief every time a letter arrived. Paige likened her contact to a drug addiction,

'I crave those letters, I live for them, then when I have read them I feel (...), I can't describe the pain I feel, there's no words in the dictionary for that pain, then when it subsides the cycle of craving the next letter begins again'.

The lack of support birth mothers receive in respect of post adoption contact is of great concern. Letters, usually written by adoptive parents, sometimes by the child when they reach a certain age, have a huge emotional impact on birth mothers. No respondent was contacted prior to receiving letters which sometimes contained difficult and painful news, such as a child's diagnosis of autism, a breakdown of adoption, the divorce of adoptive parents, and children running

away from the adoptive home. One respondent showed me a letter from an adoptive father filled with abuse and false allegations against her, a letter which had apparently been approved by the letterbox service. Birth mothers were left to deal with this alone; often wanting to do something but being powerless. Attempts to contact local authorities to discuss the letters were futile, birth mothers were told they were not entitled to any further information. It is important to emphasise that not one birth mother said they felt a sense of entitlement to letterbox contact, in fact the contrary was true. Most commented at some point in the interview that they felt underserving of letters because they had 'failed their children'. Making enquiries to local authorities in the event of lack of contact was not based on the belief that they had a right to receive information, it was motivated by the need to know if the information in the letters had impacted negatively on the children's placements.

### **ADOPTED CHILDREN WHO SEEK THEIR BIRTH MOTHERS**

A significant finding was the disclosure by three birth mothers that they were having contact with their adopted children which in all cases was unauthorised. This data was not collected in response to direct questions but rather it flowed from the questions about post adoption contact, and in all cases this disclosure was initially communicated cryptically because the birth mothers concerned were afraid to talk about it until they felt able to trust me. The respondents all concurred that their children had been active in seeking and contacting them. In two cases the children had located their birth mothers on social media sites, and in the other case, the children had found their birth mother through the electoral register and had arrived unannounced at her home address. Michelle had met with her 14-year-old son, who was adopted aged eight. She believed the adoptive family were

not aware of this. Jane was in daily contact with her children aged ten and eleven on their social media accounts. She explained how she 'ignored their messages for months, I didn't reply, but I read them over and over'. Eventually she relented and made contact. Jane provided some of these interactions to me to demonstrate her children's enthusiasm for this contact, but she had no plans to contact her local authority with this evidence. She feared being banned by a court order for having any further contact. She was desperate not to upset the balance and 'have my kids feel I have rejected them a second time'. She admitted her 'ex solicitor' had advised her to close her social media account and use a false name if necessary but she felt unable to do so. Jane accepted that this situation would eventually be exposed but she felt the risk was one worth taking. Lindsay travelled by train to meet her children aged twelve and 15. She spoke of her guilt and feared that she was doing something illegal, but she felt unable to resist since her children had found her address and arrived at her home. Lindsay had enquired to her local adoption agency about children who wished to see their birth parents and what the protocol was but found 'the door was slammed in my face'. Like Jane she felt she could not refuse to see her children because she believed they would feel rejected. The situation had left her 'with no choice but to visit them and face the music when it comes out'. Michelle explained that seeing her child meant 'I got back a missing part of me, the law said I wasn't his mum, but he decided I was his mum, because it was only the law that decided I wasn't his mum no more'. It is possible that situations such as this are so irresistible for birth mothers, despite the risks, because it removes the stigma of 'the unfit mother'

and in turn reinforces their self-esteem which was eroded through the adoption process.<sup>101</sup>

This surreptitious contact clearly puts these birth mothers in difficult positions. It also places risks on the stability of the children involved, not only because of the emotional impact of seeing their mothers, but additionally that there is possible deception involved between them and their adoptive families. These situations have potential to cause untold problems. There appears to be no ideal solution that can be put forward, except the need for honesty despite the risks involved. These findings illustrate that the 'irrevocable' adoption order is not always the end of the story. It is a legal fiction in some cases. In situations such as these it is not possible to reconcile the words of Baroness Hale in *Re P*<sup>102</sup> where her Ladyship stated '[adoption] severs irrevocably and for all time, the legal relationship between her child and her family of birth'.<sup>103</sup> The legal relationship may be terminated, but the human relationship may be less straightforward to eradicate.

Unauthorised contact was not the only situation to cause unexpected challenges for birth mothers. Local authorities placing children for adoption in close proximity to their former homes resulted in three respondents being aware of this; with two knowing their adopted child's address and school. Nicky described the day she saw her adopted child and his mother,

'They separated my kids, but I had no idea that they put my son with adopters here (in my town). They came into the café (where I work). My child and his new mum. I saw them and ran behind the counter, through the kitchen and out the back door because I thought I would be arrested if they saw me. I wasn't sure what to do so I called Cafcass and the guardian

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<sup>101</sup> This is a point made by Oakwater (2012), p.67 where she argues that these are reasons why birth parents seek out adopted children on social media but arguably it equally applies to the opposite situation.

<sup>102</sup> *Re P and Others* [2008] UKHL 38.

<sup>103</sup> para 85.

who did the adoption rang back in about 2 minutes. She said I had to avoid any confrontation. I tell you it's terrible to see your child and not say a thing. After weeks of calling the social worker I got a letter from their legal service admitting he lives on the X estate, that's 7 miles away from me. The letter said, 'it's not ideal' and suggested that I move, but why should I? We have lived here all our lives. I would never actively look for him, but I can't help it if we see each other- it's not forever is it the adoption? When I'm out I do look out for him, I can't help myself. If I walk past the park or the football pitch, I think maybe he's there'.

Lisa: 'So there's no closure?'

Nicky: 'No. there's none. It's become a way of life, as regular as sleeping and eating. Wondering if I am going to see C'.

From the narratives it can be seen that the reality of post adoption contact for these birth mothers is uncertain, complicated and emotionally painful. There is no guide book for birth mothers on how to manage and cope with maintaining communication with new parents of their children, who in law are now strangers. It takes a huge amount of emotional strength and tenacity to focus any form of contact on the child's needs, and in the years following adoption, most respondents possessed neither. They were vulnerable, grieving and mostly unsupported. Yet they felt they needed to 'put on a brave face' in letters to their children. It is not necessarily helpful to their own recovery to internalise and deny their grief, but it is clear that those involved with birth mothers cannot, or will, not recognise the impact of adoption on them. Carolan considers that,

'It is impossible to capture the extent of the emotional devastation that is involved in permanent removal of your children. The pain of the process of initial loss, and then knowing another woman is providing mothering for your children, of being judged by those around you, and finally, of knowing that your life will be devoid of the presence of your children forever'.<sup>104</sup>

## 5.11. CONCLUSION

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<sup>104</sup> Carolan, M., Burns-Jager, K., et al, 'Women who have their Parental Rights Removed by the State: the interplay of trauma and oppression' (2010) 22 *Journal of Feminist Family Therapy* 171 at p.183.

This chapter has investigated the subjective impact of adoption law by presenting the findings which are contextualised within the legal framework of the relevant adoption legislation. The focus has been directed towards the respective views, perceptions and feelings of birth mothers in intimate detail. From their narratives, it is possible to appreciate a great deal about the operational law through the eyes of the women who gave birth to children now adopted by way of the state and the family courts. These personal accounts have provided depth and meaning to a problematic and controversial area of the law. Overall there has been the commitment to analyse and disseminate respondents' stories through their own words to achieve the study's key objective; this to empower those women by giving them a voice.

## **CHAPTER SIX: ARGUMENT AND CRITIQUE**

### **6.0. INTRODUCTION**

This chapter begins by emphasising the importance of academic research which gives marginalised groups of women the opportunity to tell their stories and have those stories disseminated to a wider audience. It explains the challenges attached to researching such groups because of the institutionalised stigmatization they encounter which leaves them overwhelmingly reluctant to disclose the truth of their experiences. It goes on to critically analyse the results from the interview data in relation to existing research on adoption and relatable jurisprudence from the family courts, including the demands of a fair process under the ECHR and the HRA. It will argue that ingrained unfairness exists within a system that has a duty to promote the legal rights of birth mothers. The final part of the chapter summarises recent reform of adoption law which includes important judicial insight along with a reflection on how the law and approaches of the court may impact on future birth mothers in adoption proceedings.

### **6.1. THE PURPOSE OF THE RESEARCH AND CHALLENGES PRESENTED**

This research was designed to explore the relationship between birth mothers and adoption law. The resulting findings will contribute original knowledge about the social life of contemporary birth mothers and provide insight into how they experienced the legal process. Beyond the strictly academic context, this thesis seeks to empower birth mothers by researching adoption on their behalf and disseminating the results in the context of their personal experiences. The commitment towards providing a platform for birth mothers to speak was originally derived from Mason and Selman's argument that 'the voice of the non-



relinquishing parent is not heard, and few are willing to listen to their version of events'.<sup>1</sup> Additionally, presenting the voices of women in research is of crucial importance to the progression of social science. In this context, Gilligan argues,

‘As we have listened to men’s voices for centuries, so we have come recently to notice not only the silence of women but the difficulty of hearing what they say when they speak. The failure to see the reality of women’s lives and to hear the differences in their voices stems in part from the mode of social experience and interpretation’.<sup>2</sup>

A significant challenge with a legal study of birth mothers and adoption is that the body of literature on adoption law does not involve them in great depth. Possibly this is a consequence of some of the barriers this research has highlighted. This limitation was addressed by incorporating literature and research from other disciplines. This approach provided a broader picture of the lives and experiences of birth mothers as well as placing the law into a social context.<sup>3</sup>

Encouraging women from marginalised groups<sup>4</sup> to partake in research can present challenges. Although there was a great deal of initial interest in the research, many of the respondents were extremely uncomfortable with the idea of talking about their child’s adoption. Commentators on qualitative interviewing advise researchers that they will be liable to encounter difficulty in ‘penetrating the private world of experience’.<sup>5</sup> To address the participants’ reluctance, a variety of qualitative interviewing tools were employed to try and help them feel

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<sup>1</sup> Mason (1997), p.24.

<sup>2</sup> Gilligan, C., *In a Different Voice: Psychological Theory and Women’s Development*, (1982), pp.173-174.

<sup>3</sup> See Chapter Three, Literature was drawn from social work, sociology, psychology and women’s studies.

<sup>4</sup> The literature argues that birth mothers experience multiple disadvantages. They have been marginalised, excluded, isolated and discriminated against in society and by institutional practice. After Adoption, *The Esme Fairbairn Foundation*, <https://goo.gl/f3jMR3> (Accessed 13 Nov 2017)

<sup>5</sup> Silverman (2006), p.127.

secure about being interviewed; for example: disclosure of insider status,<sup>6</sup> and confirmation that the research was unfunded. Respondents were suspicious of research which was government or adoption agency funded, some suggested research of this type may paint them in a bad light. Finally, the rejection of researcher/researched hierarchy.<sup>7</sup> These methods were utilised with the additional objective of building trusting relationships with participants.<sup>8</sup>

Many of the respondents said they felt they were 'silenced' by those involved in the adoptions. This was defined by some as being 'gagged' or 'supressed' from talking about their experiences. They feared that if their participation was discovered, they may lose what little contact they had with their adopted children or they would risk having their names removed from the Adoption Contact Register.<sup>9</sup> Whether there was any basis in this apparent 'gagging' of birth mothers is difficult to establish. The birth mothers identified as the Activist typology<sup>10</sup> were commonly subjected to injunctions prohibiting them from publishing their children's names or details of the adoption on social networks; but the Reflector typology did not specify legal restrictions by which they were banned from talking about the adoption, rather their belief appeared to originate from stigmatizing and from the way they were treated by those in authority who 'had power over them'.<sup>11</sup>

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<sup>6</sup> Chapter Three p.145.

<sup>7</sup> Oakley, A., *'Interviewing Women: A Contradiction in Terms'*, in Roberts (1981), pp.30-61.

<sup>8</sup> Braun (2013), pp.94-96.

<sup>9</sup> The Adoption Contact Register provides a way for adopted people and their relatives to register their interest in contacting one another. Any person aged 18 years or over and who is related to an adopted person may apply to be registered on Part Two. It is necessary to provide evidence to satisfy the Registrar General of their relationship to the adopted person.

<sup>10</sup> Chapter Three p.181.

<sup>11</sup> Cece BM 5.

Despite being reassured that their participation was anonymous, respondents harboured fears that they would be discovered. They were also worried that I would think they were lying about their experiences. This is an issue Charlton et al identified in their research, reporting that birth parents,

‘[Are] aware of how little credence is likely to be attached to their views. They know indeed that their accounts are likely to be dismissed as stemming from nothing more than anger and hostility towards a system that found it necessary to remove their children’.<sup>12</sup>

## **6.2. AN OVERVIEW OF THE FINDINGS: ‘THE AVERAGE BIRTH MOTHER’**

The findings on the different stages of the adoption process were integrated to form an overall picture of birth mothers’ experiences. Whilst there was some evidence of good practice which observed the law in a small number of cases, the key findings demonstrate significant and concerning inadequacies with the application of both practice under the law and with administrative procedures in respect of the treatment that the respondents experienced. By deducing data from the individual interviews, a ‘typical experience’ of the ‘average birth mother’ has been constructed. The ‘average birth mother’ was insignificant in the general operation of the adoption process. She experienced notification of the plan to adopt with a lack of procedural correctness leaving her unsure whether she should seek legal advice. Where consent to placement was given, it failed to follow the statutory requirements. When adoption was opposed, the adversarial court process was always traumatic, sometimes intolerable; and it appeared that the loss of her child by adoption was the *fait accompli* from the beginning of proceedings. Throughout the adoption process there was little or no support adequate to her needs. No opportunity was provided for her to be genuinely

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<sup>12</sup> Charlton (1998), p.5.

involved in the process, or to have a voice to express her wishes. Post-placement-order, contact with children was terminated suddenly and without warning. Goodbye meetings were either not facilitated or were conducted with no consideration to her feelings. The Life Story Book was created without her input or influence, and then withheld from her. Post adoption contact was unreliable, unsupported, and sometimes terminated without explanation; if the latter occurred she had no available means by which to challenge this decision. Post adoption counselling was not independent of the local authority or was not offered at all. Most of the services that were provided were little more than bare tokenism. Her grief was disenfranchised because her bond with her children was perceived as insignificant. The 'average birth mother' emerged from this experience with a 'spoiled identity'<sup>13</sup> because she had been stigmatized by those empowered to intervene to protect her child, but in doing so they had the duty to provide her with the requisite protection of her rights. She was not informed of her rights and subsequently resigned herself to inadequate treatment because any exercise of rights felt inconceivable. But, over time, she reflected on this treatment and recognized its fundamental unfairness. This led to a burning sense of injustice with no means of redress at a later stage. Birth mothers are silenced by a combination of power imbalance, weak state accountability, a lack of robust advocacy and social and legal stigmatizing. This silencing is fortified by the disregarding of birth mothers' voices in much of the adoption research.

In the light of the results it can be argued that some local authorities' defensiveness towards those who research birth mothers<sup>14</sup> is incidental to the

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<sup>13</sup> Stigma is a process by which the reaction of others 'spoils' normal identity thus creating a 'spoiled identity', Goffman (1963), p.14-15.

<sup>14</sup> See Chapter Three p.162.

findings, because such agencies are aware that their practice in respect of birth parents is deficient, potentially to the point of there being grounds for an action under s7 of the HRA 1998. Under this section, a person may bring proceedings against a public authority that has acted unlawfully.<sup>15</sup> It could also be argued that some local authorities are reluctant to recognise that birth parents have certain legal rights in the adoption process. This has been recognised in recent research by Featherstone et al, who reported that,

‘Particular groups of parents such as birth mothers with mental health or learning difficulties were identified as being especially vulnerable to both losing their children and not having their human rights respected. Those subject to domestic abuse experience child protection and decision-making processes as highly punitive’.<sup>16</sup>

The judiciary have criticised local authorities who neglect parents’ rights. In *(G)(Children)*<sup>17</sup> Munby J, now President of the Family Division, stated that ‘not for the first time, and I fear not for the last time, parents complain, with all too much justification that they have been treated unfairly by a local authority’. Munby J went on to accuse the local authority of possessing a ‘mindset’ and a ‘culture’ which, he stated ‘despite sufficient judicial authority, continues to ignore ‘basic and important messages on day-to-day practice’.<sup>18</sup> Despite losing the legal right to raise their child, birth mothers are not undeserving of legal protection. Lord Steyn, writing extrajudicially, noted that,

‘A constitutional democracy must protect fundamental rights. It is morally right that the state, and all who act on its behalf, should respect the

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<sup>15</sup> (1) A person who claims that a public authority has acted (or proposes to act) in a way which is made unlawful by section 6(1) may (a) bring proceedings against the authority under this Act in the appropriate court or tribunal, or (b) rely on the Convention right or rights concerned in any legal proceedings, but only if he is (or would be) a victim of the unlawful act.

<sup>16</sup> Featherstone (2018), p.13.

<sup>17</sup> *(G)(Children)* [2003] EWHC 551 (Fam) at para 1.

<sup>18</sup> para 3.

fundamental rights of individuals. Without such a moral compass the state is bound to treat individuals arbitrarily and unjustly'.<sup>19</sup>

The legal provisions intended to provide birth parents with a just process are few compared to other parties' rights in the adoption process, but these remain vital components of fairness. In 2003, Nick Allen predicted in his analysis on the new adoption law that birth parents were at risk of being denied a fair process.<sup>20</sup> Furthermore, Allen noted at the time of the review of adoption law that some were dismissive of the rights of birth parents. Julian Brazier MP was recorded as saying 'I am fed up with people putting the case for the rights of birth parents'<sup>21</sup>. Allen's concerns appear to have been justified, because it is evident from this small sample that the legal and administrative interests of birth mothers have been largely eroded by practice under the current legislation.

### **6.3. AN EXAMINATION OF THE RESULTS IN RELATION TO EXISTING RESEARCH**

There follows an examination of the findings in relation to previous research on adoption and birth parents. It was not possible to locate contextual research material from the law discipline, so it originates from sociology, women's studies, social work and psychology. This raises two issues: Firstly, the lack of legal research demonstrates the need for further study into adoption law and the impact on those subjected to it; and secondly, the dearth of legal research presents challenges in respect of measurable or relatable findings which are primarily dependent on judicial opinions rather than empirical legal research.

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<sup>19</sup> Lord Steyn quoted in Brayne, H, Carr, H., *Law for Social Workers*, (2008), p.75.

<sup>20</sup> Allen (2007), p.11.

<sup>21</sup> Julian Brazier MP, *Hansard*, (House of Commons) 26 March 2001, col 744.

Nevertheless, the following discussion enhances the current research in other fields with a socio-legal standpoint.

#### **6.4. NOTIFICATION AND THE ‘PRESUMPTION OF ADOPTION’**

When adoption is proposed for a child, the preliminary actions taken by the state require a strict adherence to procedure. MacFarlane defines the minimum requirements,

‘When a local authority first intervenes in a family it is unlikely that there will be a ready-made plan for adoption. The process within care proceedings will involve assessment and evaluation of the risks and benefits of the child remaining with her family’.<sup>22</sup>

However, over half of the respondents’ experiences were more consistent with Proudman and Trevena’s analysis, who argue that, in practice, there is a ‘presumption of adoption as soon as care proceedings are first initiated by the removal of the child’.<sup>23</sup> Likewise, Charlton found that birth parents in her study suspected that there was ‘a degree of collusion within adoption teams, the parents felt they were not being told the full story. They believed that adopters were identified before care applications were made to the court.’<sup>24</sup> This concurs with a number of birth mothers’ convictions in the current study. Some believed that the subject of adoption was casually mentioned by practitioners or contact facilitators because behind the scenes ‘the plans were already in motion’<sup>25</sup>. In some cases, this had the effect of convincing birth mothers they had no option other than to consent to their child being placed for adoption.

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<sup>22</sup> McFarlane (2010), p.162.

<sup>23</sup> Proudman (2012) p.989.

<sup>24</sup> Charlton, et. al. (1998) p.42.

<sup>25</sup> Gill BM10.

Presumptions or suggestions of adoption early on in care proceedings contravene the 'no order principle' in s1(6) ACA, which provides that,

'The court or adoption agency must always consider the whole range of powers available to it in the child's case (whether under this Act or the Children Act 1989); and the court must not make any order under this Act unless it considers that making the order would be better for the child than not doing so'.

This section means that an adoption agency and the court must consider all the available options starting with the least interventionist first. It follows that adoption is the most interventionist on a sliding scale with the least being no order at all, followed by residence orders, supervision and care orders and special guardianship orders.<sup>26</sup> Even if it transpired that adoption was 'mentioned' during contact or whilst a mother was still pregnant, because all other options had been considered and dismissed, the respondents were not aware of this. Birth mothers have the legal right to be involved and kept informed of the adoption process from the time adoption is formally decided upon to the time an adoption order is applied for.

Adoption plans, however preliminary, which are not formally disclosed to birth parents are unfair raising questions about compatibility with human rights requirements. In *G (Children)*<sup>27</sup> Munby J referred to the importance of impartiality,

'Procedural fairness is mandated not merely by article 6 but also by article 8. Unfairness in the process may involve a violation of a parent's rights. Unfairness at any stage of the litigation may involve breaches of article 6 and 8. Local authorities must appreciate that the protection afforded by article 8 guarantees fairness in the decision making process at all stages of child protection'.<sup>28</sup>

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<sup>26</sup> Bridge (2003) pp.140-141.

<sup>27</sup> *G (Children)* [2003] EWHC 551 (Fam).

<sup>28</sup> para 1.



In the earlier case of *Re L*<sup>29</sup> Munby J reiterated the burden on local authorities to provide 'a transparent and fair procedure at all stages of the process-both in and out of court'.<sup>30</sup> Failing to do this he asserted 'provides unacceptable scope for unfairness and injustice'.<sup>31</sup> The requirement for local authorities to conduct themselves with 'integrity, transparency and inclusiveness' to avoid breaching parents' rights pursuant to Arts 6 and 8 ECHR was also made explicit by the court in *Re M*<sup>32</sup> a case where parents had not been present or represented at the meeting when the decision was made to place their child for adoption. Macfarlane LJ stated at the very least the state must 'ensure parents are exposed to accurate and sound legal advice at the *earliest stage, including any pre-proceedings activity*'<sup>33</sup>

## **6.5. CONSENTED-TO-ADOPTION: LOST IN STATISTICS**

Six birth mothers consented to placement of their child without being provided with the opportunity to decide whether to agree or not. There was also a notable absence of legal advice in all but one case. There is contention between this practice and the adoption consent form which directs that 'Before signing this form you are advised to seek legal advice about consenting to adoption and the effect on your parental rights. Publicly funded legal advice may be available from the Civil Legal Aid'.<sup>34</sup> None of the respondents who consented were provided with

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<sup>29</sup> *Re L (Care: Assessment: Fair Trial)* [2002] 2 FLR 730.

<sup>30</sup> paras 149-151.

<sup>31</sup> *Ibid.*

<sup>32</sup> *Re M (Care: Challenging Decisions by Local Authority)* [2001] 2 FLR 1300.

<sup>33</sup> Emphasis added in text, Lord Justice McFarlane, The Family Justice Council, The Bridget Lindley OBE Memorial Lecture 2017, *Holding the risk: The balance between child protection and the right to family life*, p.21, <https://goo.gl/UiTcma> (Accessed 13 Nov 2017).

<sup>34</sup> The Consent to Adoption Form, (A104) <https://goo.gl/GPRLb7> (Accessed 30 Sept 2017).

a copy of the form prior to being asked to sign it, so they were unaware of this fundamental prerequisite. Bainham explains that it is the responsibility of Cafcass officers to advise parents on the implications of giving consent.<sup>35</sup> Although Cafcass were the body obtaining consent, birth mothers felt the serious implications of giving consent were not explained to them. They spoke of feeling pressured to give consent which raises the suspicion that it was not informed and given unconditionally.<sup>36</sup> This concurs with Charlton's findings which found that birth parents who consented felt 'pressed, often on the advice of social workers or solicitors, the latter who were sometimes the party advising them that there was no point in fighting the adoption'.<sup>37</sup>

Consented-to-adoption has significant legal and factual consequences, yet it is rarely referred to in the literature beyond the concept of birth mothers voluntarily relinquishing their children.<sup>38</sup> Oakwater suggests that social workers and lawyers always ask birth mothers if they will consent to adoption 'as uncontested adoption is easier and cheaper for them, quicker to implement, speeding the child's journey through placement'.<sup>39</sup>

There also appear to be inconsistencies in the statistical recording of consented-to-adoptions. In the year ending 31 March 2015, 5,330 children were adopted from public care.<sup>40</sup> In June 2015 a study for the European Parliament Committee (EPC) stated that 96 per cent of those 5,330 children were adopted without

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<sup>35</sup> Bainham (2005), p.287.

<sup>36</sup> This is the statutory requirement for consent in ACA 2002 s52(7).

<sup>37</sup> Charlton (1998), p.43.

<sup>38</sup> For helpful analysis on voluntary consent to adoption see, Allen (2003), pp.45-48.

<sup>39</sup> Oakwater (2012), p.68.

<sup>40</sup> Department for Education, Children looked after in England (including adoption and care leavers) year ending 31 March 2015, (SFR 34/2015: 1 October 2015), <https://goo.gl/K6ym3B> (Accessed 11 Nov 2017).

parental consent.<sup>41</sup> Subsequent research carried out on behalf of the Directorate General for Internal Policies<sup>42</sup> argues that the data on adoptions without parental consent is a misinterpretation of the statistics. It was discovered that the statistics in question referred to the nature of court proceedings by which the child came to be placed for adoption, rather than 'dispensed with parental consent' to placement or adoption order. The government reported that in the year ending March 2013, 3,020 (96 per cent) children were placed for adoption following a placement order applied for by the Local Authority under s21 of the ACA. For a placement order to be made, consent can either be given by the birth parent(s) or dispensed with by the court. Therefore, the data from the EPC refers to the number of cases where the Local Authority brought proceedings before the court to ask for a placement order, *with or without the parents' consent*.<sup>43</sup> The statistics do specify the number of children leaving care through adoption orders but the distinction is made between where parental consent has been dispensed with, and adoption applications being 'unopposed'.<sup>44</sup> The actual meaning of 'unopposed' is not defined, so it is not conclusive that this was consent given in line with the statutory requirements, or whether there was some middle ground between consented and contested placement which has rendered them 'unopposed'. This means that birth mothers such as those who 'acquiesced' in the current study are lost in the statistics. It is simply not known how many parents

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<sup>41</sup> Director General for Internal Policies, Policy Department C, Adoption without consent Update 2016, (2016) p.23, <https://goo.gl/PTwV3M> (accessed 5 Nov 2017)

<sup>42</sup> Ibid. p.23.

<sup>43</sup> Even where parental consent is given this does not prevent the court from issuing a placement order.

<sup>44</sup> Director General for Internal Policies (2016), p.23.

gave consent, whether freely and informed or under pressure because they had been told their consent would be dispensed with anyway.

Consent secured under coercive pressure is clearly unacceptable practice. Charlton argues that it is unreasonable to seek consent from parents who are not in full agreement with adoption. She believes that even where adoption is the *fait accompli* it will still appear to birth parents that to consent is to lose the battle for their child, thus engaging primal instincts to protect the child from irreversible rejection and abandonment.<sup>45</sup> Charlton's perspective rationalises why some respondents still, many years later, have not been able to cast off the debilitating remorse they felt by signing consent to their child's adoption.

In order to bring more explicit fairness to the process, birth mothers must be given the opportunity to seek legal advice before consenting. Once consent is signed and a placement order is obtained, they will have no chance of challenging the adoption regardless of whether consent was obtained under pressure. Additionally, they are not afforded protection under the ECHR.<sup>46</sup> Without application of the correct legal processes there are elements of procedural unfairness<sup>47</sup>. In *EL v Essex County Council*<sup>48</sup> Charles J stated,

'It is well known that the public law requirement of procedural fairness is an issue. The speech of Lord Mustill in *R v SSHD ep Doody* is often cited as a useful explanation of the principle and its application. That guidance shows that fairness will often require that the person affected by a decision

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<sup>45</sup> Charlton (1998), p.45.

<sup>46</sup> See chapter five p.215.

<sup>47</sup> Fairness demands that a public body should never act so unfairly that it amounts to an abuse of power. This means that: 1. If there are express procedures laid down by legislation that it must follow in order to reach a decision, it must follow them. See The Public Law Project, *A Brief Guide for Grounds for Judicial Review*, (2006), <https://goo.gl/CjyKUN> (Accessed 15 Nov 17).

<sup>48</sup> *EL v Essex County Council* [2017] EWHC 1041 (Admin).

of a public authority is given the opportunity to make representations or to take steps in respect of that decision before it is made or acted on'.<sup>49</sup>

To take a specific circumstance, for example, are birth mothers who are in hospital. It is insufficient protection of their rights to be visited by a court official with a consent form. Where consent is sought, there must be the provision of prior legal advice and confirmation by a responsible medical officer that the signatory possesses capacity to understand the consequences of her consent as per the Cafcass guidelines on ensuring valid consent.<sup>50</sup> Charlton argues that a consented to adoption should not be taken for granted, because 'a signature on a consent form says nothing about a parent's circumstances or their views of their child's adoption'.<sup>51</sup>

#### **6.6. CONTESTED ADOPTION AND 'INSIGNIFICANT BIRTH MOTHERS'**

In his lecture for the Denning Society, Lord Wilson recalled his experiences of adoption proceedings where,

'birth parents will contest the children's removal from them tooth and nail, and they will vociferously oppose the order for their placement with the adopters and refuse to give their consent to the ultimate adoption order'.<sup>52</sup>

Speaking extrajudicially, Macfarlane LJ remarked that 'parents who are drawn into court proceedings for the first time are unlikely to have any understanding at all of the processes that are about to be deployed, and they will see it against

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<sup>49</sup> para 25.

<sup>50</sup> Cafcass, Guidance for Placement Proceedings, (2011), <https://goo.gl/63XcSS> (Accessed 15 Nov 17).

<sup>51</sup> Charlton (1998), p.46.

<sup>52</sup> Lord Wilson, The Denning Society Lecture at Lincoln's Inn, Adoption: Complexities Beyond the Law, 13 November 2014 p.9, <https://goo.gl/FtPLAC> (Accessed 9 Nov 2017).

them'.<sup>53</sup> In 1995 (when adoption was governed by the Adoption Act 1976) Hughes argued that,

'Birth parents involved in contested cases are not infrequently left with complex feelings with which they receive little help. Many birth parents need support from an allocated social worker, independent of those allocated to the child and adopters, but such support is provided infrequently'.<sup>54</sup>

This thesis does not propose to provide a critique on the current mechanism in ACA s 52(1)(b) which allows the court to dispense with parental consent based on the child's welfare requiring it, but it is helpful to provide some context by those who are critical, not least because of the participants' strong views on 'forced adoption'.<sup>55</sup> Andrew Bainham points out that the application of the welfare principle to the matter of dispensing with consent should not be considered as uncontroversial because 'it is especially problematic and likely to give rise to very real tensions within human rights obligations'.<sup>56</sup> Elizabeth Cooke believes that it is unjust to children and birth families that there are no safeguards in place for the child's interest in remaining part of his birth family, she argues 'however dependable a judge's view of welfare; a test which allows the compulsory removal of a child and the severing of his entire legal relationship is unacceptable'.<sup>57</sup>

Before the ACA was passed, Bridge and Swindells stressed that there was great need for judicial vigilance to avoid 'the potential for social engineering against the birth family'. They go on to ask the question 'have the parents any voice left to

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<sup>53</sup> Lord Justice McFarlane, The Bridget Lindley OBE Memorial Lecture Holding the risk: The balance between child protection and the right to family life, The Family Justice Council (2017), p.20 <https://goo.gl/qz17Bz> (Accessed 15 Nov 2017).

<sup>54</sup> Hughes, B., *Post-Placement Services for Children and Families: Defining the Need*, Social Services Inspectorate, Department of Health, 1995.

<sup>55</sup> Chapter five, pp.217-218.

<sup>56</sup> Bainham (2005), p.262.

<sup>57</sup> Cooke, E., 'Dispensing with Parental Consent to Adoption- a choice of welfare tests' (1997) 9(3) *Child and Family Law Quarterly* 260 at p.263.

them under the ACA'?<sup>58</sup> Indeed many birth mothers felt they had no voice in contested proceedings. They spoke of there being little point in arguing their case because they knew adoption was decided on from the beginning. In administrative law the maxim *audi alteram partem*, is one of the most valued common law principles. This principle has evolved to mean that no person shall be condemned, punished or have their legal right compromised by a court of law without having first heard that person.<sup>59</sup> Where some may argue that this 'lack of voice' was merely perceived by birth parents, it is an actuality grounded in previous studies. The Bristol Pathways Research findings showed unusually high numbers of court endorsed local authority plans.<sup>60</sup> Judicial backing of compulsory adoption has attracted a great deal of criticism from academics. Murray Ryburn argues that the UK jurisdiction, which permits forced adoption, is incomparable to other Western countries and as such the adoption legislation is,

'fundamentally out of step with that of many others, children who are subject to forced adoption are still in many respects treated as pieces of transportable property who can, by a legal fiction, have past links extinguished'.<sup>61</sup>

Yet the courts have refuted such arguments, insisting that children and their natural families are afforded special protection from interference. In *Pierce v*

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<sup>58</sup> Bridge (2003), p.152.

<sup>59</sup> Kelly, J. M., "Audi Alteram Partem; Note" (1964) Natural Law Forum: Paper 84, <https://goo.gl/ajcsu9> (Accessed 11 Nov 2017).

<sup>60</sup> Lowe, N, Murch, M, et al., Report of the Research into the Use and Practice of Freeing for Adoption Provisions, Bristol, *Socio-Legal Centre for Family Studies*, University of Bristol, (1991).

<sup>61</sup> Ryburn was referring to previous legislation the Adoption Act 1976 when the test for dispensing with consent was stricter for the courts and preserved the rights of birth parents to refuse to consent. Ryburn, M., 'The Effects of an Adversarial Process on Adoption Decisions', (1993) 17(3) *Adoption and Fostering* 20 p.39.

*Society of Sisters*<sup>62</sup> Reynolds J famously declared that '[t]he child is not the mere creature of the State'.<sup>63</sup>

Ryburn considers that forced adoption is not admissible in law but is exclusively based on moral principles,

'Forced adoptions find moral justification in the view that the state has a duty to intervene in certain circumstances on behalf of its citizens or its future citizens, where they would otherwise be at significant risk. The debate about compulsory adoption is a moral one. It centres on questions such as: what constitutes adequate parenting? What forms of family life should we support which should we reject?'<sup>64</sup>

For Ryburn 'forced adoption' says more about the failings of parents than it does about children's welfare. It is certainly true that parents' deficiencies are forensically detailed throughout court reports. Parents who attend court must listen to graphic accounts of their neglectful behaviour, dysfunctional relationships and bad childcare decisions with only their counsel providing a medium for their defence.<sup>65</sup> Devine is also critical of forced adoption based on apparent risk of future harm, which was cited by many of the birth mothers as a deciding factor in proceedings. This, she argues, causes ineffable and extreme distress to families.<sup>66</sup>

The respondents' experiences of disempowerment correspond with Ryburn's argument that 'outcomes in contested adoptions demonstrate that those with institutional powers can override the wishes of others who are less powerful'.<sup>67</sup> Where some birth mothers compared placement proceedings to a criminal trial,

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<sup>62</sup> *Pierce v Society of Sisters* 268 US 510 (1925).

<sup>63</sup> *Ibid.* para 535.

<sup>64</sup> Ryburn (1993), p.39.

<sup>65</sup> Although birth parents' counsel are not 'defending' them as would occur in a criminal trial, the adversarial process leaves parents feeling that they need a 'defence'.

<sup>66</sup> Devine (2015) p.8.

<sup>67</sup> *Ibid.* p.42.



Ryburn views the family courts as a far less objective setting than the criminal courts,

‘It is reasonable to doubt the equitable operation of a largely similar judicial process in adoption where fact can often less easily be distinguished from opinion. Where there may be less exacting examination of evidence and where there is no jury to widen the field of vision. The court, as every witness is likely to learn, is a hostile environment’.<sup>68</sup>

The respondents’ memories of court proceedings appeared to be the most traumatic experience of the whole process of adoption. Mason and Selman likewise found that birth parents’ court appearances presented as deeply traumatic. They suggest the trauma was instigated by ‘the selective nature of evidence given by social workers to support their case, the adversarial nature of child care proceedings unnecessarily and publicly brands parents as bad’.<sup>69</sup> Similarly, Charlton established that birth parents were ‘ill equipped to participate’<sup>70</sup> finding evidence given against them was sometimes irrelevant.

Although some respondents categorised the ‘public slating’<sup>71</sup> of their parenting as distressing, most did not directly relate that to the trauma they experienced. What seems to make court particularly traumatic is the need for parents to manage two separate problems. The first being the presentation of evidence portraying them as blameworthy and the second, the realisation that they have lost their children. When combined these factors appear to make the court process understandably unbearable for some. This ordeal is known to provoke aggressive and confrontational behaviour in birth parents which is often directed at social workers and other professionals.

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<sup>68</sup> Ibid. pp.40-41.

<sup>69</sup> Mason (1997), pp. 21-28.

<sup>70</sup> Charlton (1998), p.35.

<sup>71</sup> Cece BM5.

The imbalance of power through the adversarial process is argued by Neil as the primary reason why parents' relationships with children's services break down.<sup>72</sup> Charlton's respondents were 'shocked that social services presented facts as evidence without putting it in the context of events in their life'.<sup>73</sup> Ryburn argued two decades ago that 'the parties to proceedings are represented as one-dimensional figures by their legal advisors in what may well appear to be a carefully controlled battle between good and evil'.<sup>74</sup> This illustrates why some respondents felt frustration which transformed into anger directed towards professionals. This also supports Charlton's findings that parents became angry when social workers who had previously 'befriended them' became adversaries in court.<sup>75</sup> This often resulted in parents being removed and barred from the courts. It is not unusual for evidence to focus on parents' hostile interactions with social workers rather than their parenting. Although aggression should not be excused, it should be anticipated and even expected, for two primary reasons: firstly, that anger and protest are natural, organic stages of grief;<sup>76</sup> and secondly, because the nature of child protection proceedings means emotions regularly run high. In his judgment in *Re F*<sup>77</sup> Wall LJ stated that,

'Any system can cope with compliant recipients or recipients who take no action and do not stand up for their rights. Social workers should be trained to deal with and treat properly those who are often irrational and offensive'.<sup>78</sup>

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<sup>72</sup> Neil, E, Beek, M, et al., *Contact Arrangements for Adopted Children: What can be learned from Research?* (2012) Norwich, University of East Anglia Centre for Research on the Child and Family, p.193.

<sup>73</sup> Charlton (1998), p.36.

<sup>74</sup> Ryburn (1993), p.39.

<sup>75</sup> Charlton (1998), p.39.

<sup>76</sup> Bowlby, J., *Attachment and Loss: Loss, Sadness and Depression*, (1981), pp.112-114 <https://goo.gl/UZHwtv> (Accessed 8 Jan 2018).

<sup>77</sup> *Re F (Placement Order)* [2008] 2 FLR 550.

<sup>78</sup> para 81.

Some respondents also felt that judges were acquiescent towards placement applications. Macfarlane LJ recognised this concern as a 'significant and growing distrust shown by some parents towards judges, this is deeply worrying and needs to be addressed'.<sup>79</sup>

Charlton found that some birth parents attempted suicide following adoption proceedings.<sup>80</sup> She argued this was pertinent not only to separation from children but was sometimes related to the termination of abusive relationships which had been exposed by the intervention and court process. Almost all the respondents in the current study were dependent to some degree on abusive partners. They had no idea how to manage the 'enforced change'<sup>81</sup> of life without their partner and their children: as a result of this dislocation the subject of suicide was raised many times.

### **ACCOUNTABILITY, RESPONSIBILITY AND ARTICLE 3**

It has been established that birth mothers are generally offered no after-care or support following the placement or adoption of their child, despite the enormity of what has happened. Carolan et al identify the damaging interplay between oppression and trauma on birth mothers because of adversarial proceedings following child removal.<sup>82</sup> Understandably there is evidence of high incidents of suicidal thoughts and attempts in the period following court proceedings. There are no statistics available on the number of women who commit suicide following child care proceedings, but in this study alone over half of the birth mothers said they felt suicidal after their child had been removed. Several had also attempted

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<sup>79</sup> Lord Justice McFarlane (2017), p.21.

<sup>80</sup> Charlton (1998), p.38.

<sup>81</sup> Ibid. p.40.

<sup>82</sup> Carolan et al (2010).

suicide, which in some cases led to their compulsory and long term confinement in mental health units.

Projecting strongly from the narratives is the absolute lack of concern by local authorities and connected agencies about birth mothers following the loss of their child; a loss which Charlton defines as a 'catastrophic experience which threatens the psychological core'.<sup>83</sup> This trauma is aggravated by a realisation of the 'living death' of the child where adoption with no form of contact leaves a mother trying to mourn for a missing child who is still alive. It is when this grief becomes unmanageable that birth mothers seek escape from the pain they are feeling by attempting or committing suicide.<sup>84</sup> Many women in this situation have no close family because they themselves were brought up in the care system.

There must be a higher level of accountability and a responsibility on the state to protect birth mothers from physical harm or death, along with greater attention paid to the risks of suicide which have proven systematic amongst parents who experience compulsory adoption. If local authorities and other relevant public bodies ignore the very real possibility that a birth mother may attempt suicide, this suggests a potential breach of her human rights under Art. 3 of the Convention, 'No one shall be subjected to torture or to inhuman or degrading treatment or punishment'. It is argued that a duty of care exists which may begin when a local authority intervenes in a family's life and continues after a child has been placed for adoption. This argument is strengthened by the recent Supreme Court decision in *Commissioner of Police of the Metropolis v DSD*.<sup>85</sup> Although this case

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<sup>83</sup> Charlton (1998), p.77.

<sup>84</sup> Strikingly a large number of respondents said, 'I couldn't live with myself anymore'.

<sup>85</sup> *Commissioner of Police of the Metropolis (Appellant) v DSD and another (Respondents)* [2018] UKSC 11.

concerned the failure of the police to act in criminal investigations, local authorities as public bodies have the same 'positive obligations' under Art 3 to ensure birth mothers are protected from foreseeable harm which can be linked back directly to the administrative process, the court proceedings, and the loss of their child. The 'inhuman and degrading treatment' is arguably the complete failure to acknowledge, support and monitor people who have experienced 'a catastrophic experience' at the hands of the state and thus the state must be held accountable.<sup>86</sup>

### **6.7. THE JUDICIARY'S OBSERVATIONS ON BIRTH PARENTS IN COURT**

There are enough concurring narratives in the findings and sufficient academic evidence to establish that birth parents experience court as a traumatic and horrific experience. The birth mothers in this study were attending court with mental illness, learning disabilities, substance problems, were long term sufferers of domestic abuse and other serious social problems. When a process regularly drives service users to attempt suicide the system should be considered for its effectiveness, not only to protect children, but to ensure birth parents are at the very least offered support. The courts expect local authorities to ensure that all parents play a part in the process with extra support provided if necessary. In *Re G*<sup>87</sup> Munby J explained,

'Parents involved in cases are vulnerable, they may suffer from physical or mental disabilities or be educationally or socially disadvantaged. They are often ill-equipped to cope. I emphasise that article 8 imposes positive obligations on a local authority to ensure parents are informed and part of the decision-making process'.<sup>88</sup>

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<sup>86</sup> With thanks to Kim Stevenson for suggesting the relevance of this case.

<sup>87</sup> *Re G (Children)* [2003] EWHC Fam.

<sup>88</sup> para 59.

*In Re W*<sup>89</sup> Munby P criticised the conduct of a local authority, who failed to notify parents of the case against them despite being ordered to do so by the court,

‘It is unhappily symptomatic of a deeply rooted culture in the family courts. It is something which I complained about thirteen years ago, perhaps what I say as president will carry more weight than what I said as a junior puisne’.

In *EH v X*<sup>90</sup> Baron J referred to the ‘closed minds’<sup>91</sup> of some local authorities when it comes to supporting parents. Attention was drawn to the fact that evidence of ‘good parenting’ and ‘good qualities’ are regularly lost in the midst of allegations in court. This view was shared by Munby P in *Re W*,<sup>92</sup> where he critically reiterated the words of the judge at first instance who found in this case,

‘The parents had not been treated fairly by the local authority who from the outset was fixed in its view that the appropriate outcome was adoption. It was static in its approach and saw no reason to assist the parents’.<sup>93</sup>

In some respects, the court experience may improve for birth parents following guidance issued by Sir James Munby in his 2013 ‘View from the President’s Chambers’.<sup>94</sup> He announced that in future, social work statements for court must avoid any irrelevant detail and focus only upon the essential nature of the problems which required the local authority to intervene in a family’s life. Further, he noted, opinions of social workers would only be admissible if they were grounded in factual evidence. This was subsequently reiterated by the President

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<sup>89</sup> *Re W* [2013] EWCA Civ 1177 at para 50.

<sup>90</sup> *EH v X London Borough Council, AA, REA & RHA (through their children’s guardian), A (Children)* [2010] EWCA Civ 344.

<sup>91</sup> para 13.

<sup>92</sup> *Re W (a child) (adoption: leave to oppose); Re H (children) (adoption: leave to oppose)* [2013] EWCA Civ 1177.

<sup>93</sup> para 2.

<sup>94</sup> Sir James Munby, President of the Family Division, *View from The President’s Chambers (2), The process of reform: the revised PLO and the local authority*, (June 2013) <https://goo.gl/pngx3Y> (Accessed 10 Nov 2017).

in *Re A*<sup>95</sup> where he reminded practitioners that allegations towards parents must 'naturally feed into the conclusion'<sup>96</sup> that a child is at risk.

Ryburn argues that adversarial processes and forced adoption should be replaced by 'decisions in child care made by negotiated settlement'.<sup>97</sup> Ryburn's proposed model has been made possible by the Family Drug and Alcohol Courts (FDAC).<sup>98</sup> One respondent was referred to the FDAC shortly after the birth of her third child. Her two older children had been adopted, partly because of her problems with substance dependency. She credited the FDAC with 'giving her the chance to prove she was a good mother'.<sup>99</sup> She compared the FDAC favourably to her previous court experience, where this time, she said 'I wasn't fighting a battle with them'. She explained that the judge, who worked with her personally,<sup>100</sup> warned her not to expect that the process would be easy; but over a period of four months she was able to engage proactively with the FDAC team to the point where she not only overcame her long-term problems but had her child returned home to her.

Macfarlane LJ suggests there are long term benefits to be found from 'focussing for a time on the parent rather than exclusively on protecting the child'.<sup>101</sup> In

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<sup>95</sup> *Re A (A child)* [2015] EWFC 11.

<sup>96</sup> para 12.

<sup>97</sup> Ryburn (1993), p.45.

<sup>98</sup> FDAC, <http://fdac.org.uk/> (Accessed 13 Nov 2017), FDAC is a problem-solving court approach to improving outcomes for children involved in care proceedings. It offers an alternative, and more successful, way of supporting parents to overcome the substance misuse, mental health and domestic abuse problems that have put their children at risk of serious harm. It offers parents optimism about recovery and change, combined with a realistic understanding of the immense challenge they face.

<sup>99</sup> Paraphrased from transcript PB BM33.

<sup>100</sup> Based on the principles of therapeutic jurisprudence or 'problem solving judges' the judge works personally with the parent rather than through counsels for the parties. Harwin, J, Alrouh, B, et al., Community Care, Embedding family drug and alcohol courts into family justice, (3 July 2014), <https://goo.gl/mShH4o> (Accessed 14 Nov 2017).

<sup>101</sup> Lord Justice Macfarlane (2017), p.11.

particular, he referred to the work of FDAC and 'Pause.'<sup>102</sup> These services have been recognised within the judiciary as effective methods of 'breaking the cycle of vulnerability, addiction, and confrontation with authority which is often the hallmark of families who come back and back before the family courts'.<sup>103</sup>

## **6.8. SUPPORT AND INVOLVEMENT: CLOSING THE DOOR ON BIRTH MOTHERS**

Birth mothers' right to be involved in the process of adoption is required under the law and has been confirmed as a requirement by human rights jurisprudence.

In *W v UK*<sup>104</sup> the ECtHR held that,

'The decision making process must be as such to secure that the parents views and interests are taken into account by a local authority'[and] 'it must be determined if the parents have been involved in the decision making process to a degree sufficient to provide them with the requisite protection of their interests'.<sup>105</sup>

According to Macfarlane and Reardon 'from the time when adoption is identified the adoption agency must provide the birth family with a social worker independent of the child's social worker and via this link the birth family must be supported to be involved in the process'.<sup>106</sup> Lindley found that most adoption agencies, although committed to working with birth parents, often failed to do so in practice.<sup>107</sup>

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<sup>102</sup> Pause works with women who have experienced, or are at risk of, repeat removals of children from their care. Through an intense programme of support, it aims to break this cycle and give women the opportunity to reflect, tackle destructive patterns of behaviour, and to develop new skills and responses that can help them create a more positive future. Pause: Creating Space for Change (2018) <http://www.pause.org.uk/aboutpause> (Accessed 28 Jan 2018).

<sup>103</sup> Macfarlane, LJ., (2017), p.11.

<sup>104</sup> *W v UK* (1987) 10 EHRR 29.

<sup>105</sup> paras 63-64.

<sup>106</sup> McFarlane (2010), p.148.

<sup>107</sup> Lindley (1998), p.32.



The findings showed that most of the respondents were not sufficiently involved in the adoption process. They were not offered support, and neither were they kept updated of their children's progress in placement. This corresponds with Charlton, who found that once adoption had been decided upon social workers were averse to discuss children at all with their birth parents;<sup>108</sup> indeed some social workers felt it 'was not therapeutic'<sup>109</sup> to have birth parents involved in the process at all. Mason and Selman found that birth parents were not only excluded but were not kept informed of the progress of their child's case<sup>110</sup> Charlton argues that 'there is no better test of the worth of any professional than how it treats those who are least able to exercise a say in the services that they want'.<sup>111</sup> Complete exclusion of birth mothers may be a practice acceptable to some practitioners, but this is contentious when one considers how the law has evolved to ensure birth parents have at the very least some involvement in their child's adoption. The courts have observed the shortcomings of local authorities in this area. In *Re L*<sup>112</sup> Munby J said,

'Too often in proceedings both the level of disclosure and the extent of a parent's involvement in the crucial phases of the out of court decision making process fall short not just of the domestic law requirements but also of the standards demanded by articles 6 and 8 of the Convention'.<sup>113</sup>

It was held in *R and H v UK*<sup>114</sup> that where adoption is the outcome, there is an unavoidable duty upon local authorities to ensure parents' article 8 rights are protected by their involvement in the decision making process and this is accounting for the widest margin of appreciation. Only in exceptional

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<sup>108</sup> Charlton (1998), p.21.

<sup>109</sup> Ibid. p.42.

<sup>110</sup> Mason (1997), p.22.

<sup>111</sup> Charlton (1998), p.3.

<sup>112</sup> *Re L (Care: Assessment: Fair Trial)* [2002] EWHC 1379 Fam.

<sup>113</sup> paras 149-151.

<sup>114</sup> *R and H v UK* 35348/06 [2011] ECHR 844.

circumstances and if the child's welfare demands it, should parents be excluded from the process. Unfortunately, the assertions of the courts sometimes fail to account for the reality of adoption practice where it is argued 'a human rights discourse in social work in relation to adoption is under developed'.<sup>115</sup>

Ryburn argues it is the social deprivation of parents involved in care proceedings which renders them unheard by professionals where their wishes and feelings are concerned. He found that one in ten adopted children are from deprived backgrounds compared to one in 7,000 from white, two parent families with an income. Deprived groups are more prone to seek support or be subjected to compulsory child care services.<sup>116</sup> This concurs with 31 respondents who described their circumstances as deprived. They felt that they were not asked for their views or were misinterpreted when they were. Birth mothers rarely had the chance to express their opinions, either personally or through an advocate. According to Ryburn,

'The effective translation of their wishes is likely to depend on the ability of others, usually professionals, to advocate for them. The level of professional commitment may be hard to find in a pressurised environment of competing demands'.<sup>117</sup>

Lindley studied adoption agency practice and found that there were few opportunities for birth parents to 'make direct representations to the (adoption) panel either in person or in writing on matters of importance to them'. This was primarily due to the agencies' anxiety about protecting adopters' identities and

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<sup>115</sup> Featherstone (2018), p.17.

<sup>116</sup> Ryburn (1993), p.41.

<sup>117</sup> Ibid. p.41.

preserving the security of the placement.<sup>118</sup> It is not known whether the refusal to hear birth parents supports a legitimate aim to protect placements, but agencies' defensiveness and protectiveness of adopters reinforces the isolation felt by birth parents. The termination of involvement with birth mothers following placement was evident in many cases, causing respondents to feel as though they had lost their children long before adoption occurred. Proudman and Trevena are critical of this practice,

'The permanent link between parent and child is broken by the placement order. Parents are left alone, with no social work visits, assistance or support. Despite the fact that removal of their child is likely to be the most devastating experience parents will suffer, there are no strategies to ensure that local authorities withdraw their lines of communication gradually'.<sup>119</sup>

Charlton raised concerns in her research about the levels of 'pre-emptive termination of contact before adoption';<sup>120</sup> yet the placement order should not necessarily herald the end of birth mothers' involvement with their children because the order does not terminate their parental responsibility. Although the child may be placed with prospective adopters, before an adoption order is made parental responsibility is shared between the local authority, the adopters and the birth parents. There may be a delay of many months before the child is adopted. During that time the agency has the discretion to determine the extent to which birth parents may exercise their parental responsibility. Caroline Bridge views this wide discretion as presenting a risk that birth parents' parental responsibility will be restricted 'to the point where it becomes an illusionary rather than a substantive right'.<sup>121</sup> Despite ACA s1 providing that there must be a consideration

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<sup>118</sup> Lindley (1998), p.31.

<sup>119</sup> Proudman (2012), p.991.

<sup>120</sup> Charlton (1998), p.50.

<sup>121</sup> Bridge (2003), p.180.

of the relationship between the child and his birth family, the findings show that involvement and contact was usually withdrawn immediately following the placement order or sometimes earlier. Bridge suggests that in the event of birth parents being unhappy with such actions that suppress their parental responsibility they should utilise the local authority complaints procedure.<sup>122</sup> But in practice few respondents were aware of the complaints procedure and did not have access to advice or support to help them with making a complaint. Indeed, given the level of distress and trauma most of the birth mothers experienced in their dealings with local authorities it could be inferred that making a formal complaint was unlikely. Because of the need to avoid leading questions it was not possible to ask respondents if they had utilised the complaints process for this or any other issue, but it was mentioned by only two birth mothers who had been advised to make formal complaints by their solicitors. In *R (On the Application of EL) v Essex County Council*<sup>123</sup> Charles J thought that there should be clear guidance issued by the Family Court Rules Committee on,

‘What information should be given to parties and others involved in the adoption process about the stages of the adoption process and the ways in which it can be challenged. Rule 40 of the Tribunal Procedure (Upper Tribunal) Rules 2008 may be of interest and it is a confirmation of the point that the communication of relevant information on how individuals may challenge decisions is an ingredient of a fair process’.<sup>124</sup>

Herring notes ‘the complaints procedure is most appropriate where the dispute is whether the local authority has misused its powers’.<sup>125</sup> Therefore, the internal complaints process which is available to birth parents should be made explicit to

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<sup>122</sup> Ibid.

<sup>123</sup> *R (On the Application of EL) v Essex County Council* [2017] EWHC 1041 (Admin).

<sup>124</sup> para 48. Rule 40 of the Tribunal Procedure Rules 2008 provides for good practice in ways which decisions must be communicated to those affected by such decisions.

<sup>125</sup> Herring (2015), pp.649-654.

them and in writing. Information on making complaints is generally only available online,<sup>126</sup> this is not adequate, because not all birth parents have access to the internet or even realise they have the right to complain.

The Local Government Ombudsman<sup>127</sup> has produced guidance on good practice for local authorities when providing a service for complaints. There should be, ‘accessible information on how to complain which is easy to understand, facilities available for complaints to be made in different ways: by email, in writing, in person or by telephone. If necessary, an advocate should be made available, in particular where the complainant has a learning disability’.<sup>128</sup> Being provided with a timely, formal response which sets out reasons why their involvement has been terminated or why contact has stopped could be considered as a fair approach which leaves parties knowing where they stand and goes some way to observe the legal and administrative requirements.

## **6.9 THE ADMINISTRATIVE COMPLAINTS PROCEDURE**

In cases where it is probable that a local authority Children’s Service department has not followed correct procedure, or has acted unfairly, the first stage for an action should be the local authority complaints procedure. The CA 1989 places a duty on all councils to establish and publicise a procedure for the consideration

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<sup>126</sup> For example, see Plymouth City Council, Children’s Services Department Complaints Form, <https://goo.gl/CPUeXV>, (Accessed 14 Nov 2017).

<sup>127</sup> The Local Government Ombudsman (LGO) looks at complaints about councils and some other authorities and organisations, including education admissions appeal panels and adult social care providers (such as care homes and home care providers). The service is free, independent and impartial.

<sup>128</sup> Local Government Ombudsman, Guidance on running a complaints system, Guidance on good practice <file:///C:/Users/user/Downloads/Guidance-on-running-a-complaints-system-low-res.pdf> (Accessed 14 Nov 2017). See also general guidance in, Representation Procedure (Children) Regulations 1991 (SI 1991/894) and Department for Children, Schools and Families (2008a).

of complaints made to them.<sup>129</sup> The Children Act 1989 Representations Procedure (England) Regulations 2006 sets out the processes that must be followed by local authorities when they consider representations and complaints about the services they provide.<sup>130</sup> The Regulations provide that certain adoption-related functions may be the subject of a complaint, those relevant here are: the provision of adoption support services, placing children for adoption, including parental responsibility and contact issues, duties on receipt of a notice of intention to adopt and a local authority considering adoption for a child.<sup>131</sup>

Generally, there is a time limit for a complaint of twelve months from when the issue arose. Most local authorities have a 'tiered complaints' process whereby stage one requires the complainant to contact the department that the complaint concerns. The department manager then has a duty to respond<sup>132</sup> to the complainant to discuss the concerns raised and agree any next steps to resolve the issue. If the complainant is unhappy with the response they may elevate the complaint to stage two. At this stage an independent investigating officer not connected to the department will be asked to carry out an inquiry into the complaint.<sup>133</sup> This may involve speaking to the complainant, accessing records and interviewing staff involved in the case. The investigator's subsequent report, with any recommendations, will be passed to a senior manager to consider. The complainant will have the opportunity to accept or reject any proposals. In the

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<sup>129</sup> CA 1989 s26 and s24(d).

<sup>130</sup> Department for Education, *The Children Act 1989 Guidance and Regulations*, (October 2014) p.88.

<sup>131</sup> Department for Education and Skills, *Getting the Best from Complaints Social Care Complaints and Representations for Children, Young People and Others*, p.6. (April 2007) <https://goo.gl/Gg7MsJ> (Accessed 28 March 2018).

<sup>132</sup> Usually within 10-20 days.

<sup>133</sup> Stage two has a time scale of 25-65 working days.

event of the matter not being satisfactorily resolved it may be escalated to stage three. This involves the complaint being heard by a Review Panel which operates on behalf of the Chief Executive of the local authority. This is a formal hearing where the Panel considers submissions from the complainant and the department concerned. Following a decision by the Panel, the Director of the relevant department has 15 days to respond to the complainant, setting out any actions that will be taken as a result of the Panel's findings.<sup>134</sup> In the event of the complaint not being resolved, the final stage is to ask the Local Government Ombudsman (LGO) to review the complaint. The LGO has the same powers as the High Court to acquire information and records from a local authority. They can also investigate claims of maladministration. This is defined as an 'administrative fault by the body in jurisdiction' or 'fault in an action taken by a body acting on behalf of the body in jurisdiction'.<sup>135</sup> The LGO has full discretion to decide whether maladministration has occurred, and it will only consider a complaint if the local authority complaints procedure has been exhausted.

## **WHEN A COMPLAINT IS UPHELD**

In most cases if a complaint against Children's Services is upheld, the complainant will receive a written apology from the relevant manager, along with information about what action the department will take to ensure that lessons have been learned. If the LGO decides that maladministration has occurred causing an injustice to the individual, consideration will be given as to whether or

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<sup>134</sup> Department for Education, Getting the Best from Complaints (April 2007) p.54.

<sup>135</sup> Local Government Ombudsman, Guidance on Jurisdiction (July 2017)

<file:///C:/Users/user/Downloads/GoJ%20-%20Current%20version%20-%20web.pdf>  
p.1. (Accessed 23 March 2018).

not a financial remedy would be appropriate.<sup>136</sup> In its' guidance notes the LGO states,

'Our key principle is that the remedy should, as far as possible, put the complainant back in the position he or she would have been in but for the fault we have identified. If this is not possible, financial redress may be the only available remedy. Financial redress should always be linked clearly to the identified injustice'.<sup>137</sup>

Complaints to the LGO about Children's Services are extremely common. Between 2016 and 2017, the Ombudsman received over 16,500 complaints and enquiries about councils. The greatest proportion were about Education and Children's Services, followed by Adult Social Care, and Planning. The LGO state that around 63 per cent of complaints in this area are upheld, but given that this percentage also includes educational services, it is not possible to ascertain the likelihood of a complaint about adoption processes being upheld.<sup>138</sup> One final point worth raising is the matter of the remedial power of administrative complaints. It is probable that the most a complainant can expect where a complaint is upheld is an apology. Whether this is satisfactory in the event of unfair treatment or erroneous procedure in adoption is questionable, but it could be argued that the absence of corrective measures means the process lacks 'claws and teeth'.

## **THE COMPLAINTS PROCESS IN ACTION**

Two respondents were utilising the local authority complaints process. The complaints concerned a child placed with adopters in close proximity to his birth

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<sup>136</sup> The ombudsman asks whether a direct compensatory payment can be made to meet a quantifiable loss. The only case to consider LGO remedies in any detail was *Bernard v London Borough of Enfield* [2002] EWHC 2282.

<sup>137</sup> Local Government Ombudsman (July 2017).

<sup>138</sup> Ombudsman releases complaints statistics for all local authorities, (2 August 2017) <https://www.lgo.org.uk/information-centre/news> (Accessed on 22 April 2018).



mother's home causing them to meet unwittingly (complaint one) and the failure of an adoption team to notify a birth mother that her children's adoption had broken down and they had been returned to care (complaint two). At the time of writing, complaint one had been escalated to the LGO by the birth mother and complaint two was at a stage two independent investigation. The respondents described the difficulties they had experienced with their complaints. Complaint one was time consuming, it has taken three years to reach the LGO, without resolution. In that time there were periods of several months where the respondent heard nothing. The process was weighted under bureaucracy, with an excess of 70 letters being sent to her along with a large number of department managers and social workers becoming involved. This has resulted in an inconsistent process where the complainant became confused about who the decision maker was. In complaint two the responses were problematically ambiguous; the respondent could not understand the response from stage one and having sight of this response it appears as incoherent as to the nature of the complaint. The complainant's requests to have the letter explained were ignored. Neither respondent fully understood the complaints process or felt that it was straightforward enough to be accessible to individuals without professional guidance. Given that this procedure may be the only avenue that can be taken by birth parents in the event of a complaint about administrative procedures, much more needs to be known about the accessibility and effectiveness of the process. What is known is that across the entire spectrum of public child law, from unsubstantiated allegations of child abuse to maladministration in adoption

practice, there is a serious inadequacy where remedies for parents are concerned.<sup>139</sup>

#### **6.10. GOOD PRACTICE IN ‘GOODBYE’**

Government guidance stresses the importance of goodbye meetings to children and their birth families.<sup>140</sup> In practice, goodbye meetings are burdened with tension. Practitioners are required to balance the need to allow parents the opportunity to say goodbye to their child whilst ensuring children are not overly distressed. This is a challenging role reflected in a narrative by a foster carer who is also an adoptive parent,

‘Social services manage final contacts with birth parents as sensitively as they can, but I’ve seen contact supervisors literally wrench distraught children from their sobbing birth mother’s arms after saying their final goodbyes – it’s a brutal, draconian process. Children almost always want to be with their birth parents, no matter how abusive or neglectful they may have been and however loving or attentive the replacements are. Removing children from all they have known, no matter how necessary, can leave them with painful sensory memories and an aching sense of loss’.<sup>141</sup>

Despite accounts of how distressing final contact meetings can be, researchers argue that birth parents saying goodbye to a child is a vital component of adoption, to ensure the child ‘gains a sense of their history’.<sup>142</sup> However, good practice was not evident in many of the respondents’ goodbye meetings. Some were rushed and insensitively handled. Most of the respondents were told they were not allowed to show emotion, neither were they supported before, during or after the event. Julia Davis establishes that the elements of good practice with

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<sup>139</sup> Devine, L ‘The adequacy of remedies in respect of unsubstantiated accusations of child abuse’ (2017) *Child and Family Law Quarterly* 43 at p.1.

<sup>140</sup> Tip sheet: Preparing for the “goodbye” visit <https://goo.gl/eRfnqZ> (Accessed 12 Nov 2017).

<sup>141</sup> Lewis, R., ‘Ignoring family ties: is it really best for children?’, *The Guardian*, (24 May 2016).

<sup>142</sup> Davis, J., *Preparing for Adoption*, (2014), pp. 101-102.

final contacts must involve a carefully thought out event requiring the involvement of the adoptive family (if there is one), the birth parents and social workers, each party will need to be supported and their own emotional needs must be acknowledged and not ignored. Davis emphasises that goodbye meetings should take as long as is necessary to ensure the child and his birth parents have adequate time together. Finally, birth mothers should not be left alone after the goodbye contact unless they specifically request it.<sup>143</sup> This concurs with Charlton's view that support is crucial for birth mothers following the final goodbye.<sup>144</sup> In the current study several respondents who were not supported at all recalled feeling suicidal, and in two cases attempted suicide in the days following the goodbye meetings. Those who were treated with kindness and compassion felt more able to grieve naturally and eventually focus on what remained in their life rather than solely on what they had lost.

For those who were not given the opportunity to say goodbye there are unresolved issues, primarily the concern that their children suffered grief and confusion. In these cases, there is a need for transparency. Mothers should have clear reasons given to them why there will be no final contact, then, as with the previously discussed issue of involvement in the process, they have the informed choice to make a formal complaint if they are unhappy with the reasons given.

#### **6.11. THE LIFE-STORY BOOK: A CHILD'S RIGHT TO 'POSITIVE SELF-IDENTITY' OR BARE TOKENISM?**

Since the 1970s, researchers have argued that adopted people have the right to access information about their backgrounds and personal history through

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<sup>143</sup> Ibid.

<sup>144</sup> Charlton (1998), p.10.

information provided by birth families. The law makes provisions for such sharing of information by Life Story Books (LSB).<sup>145</sup> The findings showed that birth mothers felt that their LSBs were strictly controlled or overwritten, giving them no autonomy to provide their version of their child's life. Ryburn argues that during the court process parental failures are presented not just to support adoption but to provide 'moral sanction'<sup>146</sup> to the action taken. If LSB subsequently contains evidence that suggests the children were loved, cared for, or there were happy memories to share, there is concern amongst professionals that adopters may find this difficult to comprehend.<sup>147</sup> Ryburn points out that adopters may not wish to contemplate the possibility that their children could have stayed with their birth parents with the right help and support. This poses the risk that, in Ryburn's words 'children may receive nothing more than a sanitised version of unpalatable facts that formed the basis of the local authority case in court'.<sup>148</sup> Despite the law providing adoption agencies with discretion to involve the birth family 'wherever possible',<sup>149</sup> there remains a duty to involve them in the process of information sharing because, as McFarlane argues 'participation and involvement is an important part of post-adoption support that all agencies must provide'.<sup>150</sup>

Lindley confirms how uncertain the nature of LSB procedures are within adoption agencies. Only 22 per cent of agencies held a formal policy on LSB, although most carried out similar practices. This tended to be a request to birth mothers (or birth family members) for information which would then be collated by the

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<sup>145</sup> See Chapter Five, p.240.

<sup>146</sup> Ryburn (1993), p.44.

<sup>147</sup> Ibid.

<sup>148</sup> Ryburn (1993), p.44.

<sup>149</sup> Standards 2.5.to 2.7 concern the Life Story Book (LSB) which should be created by birth parent(s) under the coordination of a social worker.

<sup>150</sup> McFarlane (2010), p.149.

agency staff without inclusions by birth parents who would not be shown the final copy.<sup>151</sup> This process not only presents as tokenistic, it ignores the correct procedure which provides that the role of the adoption agency is to,

‘Encourage all family members, including siblings, to be involved in the process of providing information to the adoptive family about the child’s background and early life. The birth families’ views about the adoption should be recorded and parents should have an opportunity to see all information about the birth family that is passed on to the adopters’.<sup>152</sup>

There seems to be an element of institutional control in the creating of LSB. By excluding birth parents from the process, the information given to adopters can be managed and developed to suit the agency’s permanence report, but at the expense of birth mothers’ rights to provide life story information; which arguably should not be constructed from official material or third-party sources. The law has evolved to ensure children have a true sense of their origins, no matter how sad and deprived they were. Many children are deeply loved by their mothers and the knowledge of that should not be withheld from them because of a diluted or regulated version of their life story.

Oakwater puts forward her theory why LSB’s are promoted reluctantly by practitioners. She suggests it is due to the ‘rose tinted’ nature of such information which presents pictures of a child’s life which are only focused on a period not involving intervention by authorities, so in other words life stories are a ‘lie’. She believes this is to protect children from sensory trauma of recalling the real story of ‘days without food, being locked in a cupboard covered in sores and excrement and angry adults’.<sup>153</sup> Oakwater generalises birth mothers’ situations to the extreme. Children who have suffered harm should be protected from further

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<sup>151</sup> Lindley (1998), p.31.

<sup>152</sup> McFarlane (2010), p.148.

<sup>153</sup> Oakwater (2012), p.106-107.

trauma, they should have access to therapeutic services but equally they have a right to access to information about their pasts which is not always going to be a standard experience. However, birth mothers should not be prevented or restricted from giving information about their children. The information they provide can then be used in a way that the child's adoptive parents and any professionals involved deem appropriate. The failure of agencies to allow birth mothers to play their unique part in the LSB process engages with the previous findings of 'defensiveness' of local authorities. Denying birth mothers this opportunity simply reinforces their invisibility in the process.

#### **6.12. POST ADOPTION CONTACT**

The findings showed that the practice of post adoption contact had significant disparities, the only concurrence being that the courts were not involved with any of the respondents' contact arrangements.<sup>154</sup> Where applications for leave were made to the court for post adoption contact these were dismissed.<sup>155</sup> Arrangements were assigned to adoption agencies which, in all but one case, informed the birth mother that contact would be indirect by the letterbox service.

The inconsistency of contact arrangements across different local authorities is supported by Lindley's study of adoption agency practice. She found that agencies dealt with post adoption contact on a case by case basis. Furthermore, there was no mention of their legal obligations under the AAR for reviewing whether contact was in a child's interest by any agency she surveyed.<sup>156</sup> However, the adoption agencies confirmed contact would occur in all but

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<sup>154</sup> No orders for contact were made as part of the contact plan between birth mothers, local authorities, and adopters.

<sup>155</sup> CA 1989 s 8.

<sup>156</sup> Lindley (1998), pp. 23-33.

exceptional cases.<sup>157</sup> This assertion is inconsistent with the findings of this research, because although 28 respondents were initially offered contact, nine confirmed they had never received any letters. Unless these are 'exceptional cases' it is possible that 'on paper' contact was taking place whilst in practice it had discontinued or had not occurred at all and this was not documented by the agency.

For women who received letterbox notifications, similar themes emerged in the results. Some birth mothers said that writing letters had been made virtually impossible by the restrictions imposed by social workers. These restrictions included not using their birth child's name;<sup>158</sup> not calling themselves 'mummy', not being permitted to share personal news such as a new baby; and no loving or affectionate words. Some commented there was nothing left to say, so they saw no purpose in writing, whilst others felt their children would be confused and worried if they received 'a false letter'.<sup>159</sup> Reciprocating communication from adopters was also problematic because respondents had been advised post adoption that they and their child were no longer related. They did not stop feeling like their child's mother, but most understood that in law they were strangers to their children, and thus they felt bereft of any identity to incorporate into their letters.

The legal intent to create a partition between parent and child was defined by Ward LJ in *Re M*<sup>160</sup> '[The] child ceases in law to be the child of the mother. The

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<sup>157</sup> Ibid. p.30.

<sup>158</sup> It is likely that this is because the children concerned had been given new first names because social workers in Featherstone's study noted that whilst adoptive parents are told by social workers not to change names they do anyway. See, Featherstone (2017), p.19.

<sup>159</sup> Amy BM1.

<sup>160</sup> *Re M (Adoption or Residence Order)* [1998] 1 FLR 570 at para 589.

old family ties are destroyed. Adoption is inconsistent with being a member of both old and new family'. So the law that promotes open adoption contradicts itself, as Charlton also notes 'parents of children adopted become, in law, strangers to their children. They will never again be permitted to exercise a voice in their children's lives'.<sup>161</sup> It was stated in *Down Lisburn*<sup>162</sup> that where contact is decided to be in a child's best interests, it will only be successful where birth parents 'totally accept the adoption plan'.<sup>163</sup> Most respondents felt their contact was not successful, yet they said they came to recognize that adoption was best for their child. The problems connected to contact were thus not originating from birth mothers, but from the confusion and the constraints imposed around the contact. Those who found it impossible to accept the adoptions generally made the decision not to have contact, in the interests of their children.

Existing research disagrees on the impact of post adoption contact for birth mothers. Dominick, Etter, Gross, McRoy and Grotevant and White<sup>164</sup> found that birth mothers were positive about contact and receiving information about their adopted children. They also appeared to be better able to manage the grieving process. Conversely, Blanton and Deschner found that 'open adoption limits and denies the grieving process that must take place for subsequent life

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<sup>161</sup> Charlton (1998), p.3.

<sup>162</sup> *Down Lisburn Health and Social Services Trust v H* [2006] UKHL 36.

<sup>163</sup> para 55.

<sup>164</sup> Dominick, C., 'Early Contact in Adoption: contact between birth mothers and adoptive parents at the time of and after adoption', (1988), *Wellington: Research Series No. 10.*, Research Section, Department of Social welfare. Etter, J., 'Levels of Cooperation and Satisfaction in 56 Open Adoptions' (1993) 72(3) *Child Welfare* 257 at p.267. Gross, H, E., 'Open Adoption: A research based literature review and new data' (1993) 72 *Child Welfare*, 269 at p.284. McRoy, R, G, Grotevant, et al., *Openness in Adoption: new practices, new issues*, (1988), p.101. McRoy, R, G, Grotevant, H, D, White, K, L, *Openness in Adoption: new practices, new issues*, (1988).



adjustment'.<sup>165</sup> It is possible that empirical research reaches opposing conclusions because post adoption contact affects birth mothers very differently. The findings of this research demonstrated that factors such as personality, family support, treatment by professionals, whether the respondent had counselling and other numerous considerations affected the way birth mothers felt about contact. Paradoxically, birth mothers desperately wanted to receive letters but those who received them suffered a distressing resurgence of guilt and grief which often defeated positive feelings. This a common theme that has appeared in previous empirical work.<sup>166</sup>

Despite opposing views on the effects of contact upon birth mothers, there is a great deal of support for the benefits of it. Brian Sloan describes post adoption contact as a way of 'mitigating the severity of the termination of the legal relationship between the child and his natural parents'. In this context, June Thoburn argues,

'Studies of children who cannot be raised by their natural parents strongly support the view that two essential elements in enhancing their wellbeing are a sense of permanence with a family to whom they are fully attached and a sense of identity which is best achieved by continued contact with people from the past, especially members of the birth family'.<sup>167</sup>

The benefits of contact to adopted children were reinforced by Baroness Hale in *Down Lisburn*,<sup>168</sup> where her Ladyship noted that preserving contact could prevent feelings of loss and rejection and not cut off a child's past where she remembers

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<sup>165</sup> Blanton, T, L, Deschner, J., 'Biological mothers' grief: The postadoptive experience in open versus confidential adoption' (1990) 69(6) *Child welfare* 525 at p.535.

<sup>166</sup> Henney, S, M, Ayers-Lopez, S, McRoy, R, G., 'Evolution and Resolution: Birthmothers' experience of grief and loss at different levels of adoption openness' (2007) 24(6) *Journal of Social and Personal Relationships* 875 at p.886.

<sup>167</sup> Thoburn, J., 'A Brief Review of the Research on Permanent Family Placements and Post-Placement contact with Members of the Family of origin' (1994) 7 *Panel News* pp.10-14.

<sup>168</sup> *Down Lisburn Health and Social Services Trust v H* [2006] UKHL 36 para 34.

her birth family. Similarly, in *Re E*<sup>169</sup> Sir Stephen Brown P highlighted 'in a permanent placement the emphasis is heavily placed on the presumption of continuing parental contact'.

Unusually, one respondent had physical contact with her adopted child. Her discourse<sup>170</sup> illustrated how, in the right circumstances, face to face contact can be beneficial to children, adopters and birth parents. According to Charlton if physical contact is possible then it should be facilitated.<sup>171</sup> The respondents who had met the adoptive parents were grateful and supportive of their child's adoption. It would seem beneficial to children who often suffer from divided loyalties to be aware that their mother had met their new family and see that there was no hostility between the parties.

### **6.13. CLOSED ADOPTION: REVERTING TO OUTMODED PRACTICES?**

In describing the long-term physical, mental and emotional effects of adoption on the lives of birth mothers, Mason identified adopted children's whereabouts and welfare as birth mothers predominate concern.<sup>172</sup> This is something that can never be redressed in an adoption where no form of contact has occurred. Theoretically, open adoption provides 'in virtually all adoptions there will be an expectation for some limited indirect contact to continue'.<sup>173</sup> This view is consistent with modern ideas about adoption, but the findings do not fully support this theory, because a number of birth mothers had contact agreements which failed to commence. These adoptions therefore appear as 'closed adoptions'.

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<sup>169</sup> *Re E (A Minor) (Care Order: Contact)* [1994] 1 FLR 146 at paras 155-155.

<sup>170</sup> Jasmine BM12, p.256.

<sup>171</sup> Charlton (1998), pp.11-12.

<sup>172</sup> Mason (1997), p.25.

<sup>173</sup> McFarlane (2010), p.166.

In essence 'closed adoption' is 'where birth mothers are given no information about their child following placement'.<sup>174</sup> Closed adoption reverts practice to before the 1975 Children Act, where the law promoted secrecy, as Polly Toynbee notes,

'Once the adoption papers were signed a child was cut off for ever from his natural parents, an adoption order is the final and absolute utterance a court can make. It separates mother and child and guarantees that a child's origins can be kept secret'.<sup>175</sup>

But the law has moved on, as Bridge makes clear 'statutory provisions aimed at eradicating birth parents from the child's life are pointless in the case of older children who have close emotional ties to their birth families. Seeking to deny the importance of these ties may well be inimical to the child's interests'.<sup>176</sup> Bainham criticises the practice which generally discourages parents from having any further interest in their children post adoption. He considers that the 'portrayal of this interest as interference is unduly negative and it reflects a cultural attitude to long term arrangements not shared by our European neighbours'.<sup>177</sup>

In some respects, the actuality of post-adoption contact has changed little since Selman and Mason studied birth families in 1997. Despite the theory of open adoption as the new model, some respondents' experiences echoed Selman's findings where birth mothers were not offered any contact and if they were it was barely negligible.<sup>178</sup> Brian Sloan noted in 2014 that the government hinted that they were not greatly supportive of post adoption contact. This argument centred on a report by Sir Martin Narey, who suggested not only that post adoption

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<sup>174</sup> Logan (1996), p.611.

<sup>175</sup> Toynbee (1985), p.13.

<sup>176</sup> Bridge, C., 'Changing the Nature of Adoption: Law Reform in England and New Zealand' (1993) 13 *Legal Studies* 81 at p.81.

<sup>177</sup> Bainham (2005), pp. 299-300.

<sup>178</sup> Selman (1997), pp.21-28.

contact 'harms children too often'<sup>179</sup> but queried whether 'retreating to a more traditional concept of adoption serves the interests of children by potentially increasing the pool of prospective adopters'.<sup>180</sup> Narey's views are not universally shared by many experts in the field of adoption research. June Thoburn has argued that contact is as important to the child's welfare as permanence is.<sup>181</sup> Lindley is also critical of severance of contact following adoption. She asserts that most children in care prior to adoption will have had ongoing contact with their birth parents unless it was terminated by a court order. Therefore, she notes 'children are likely to have had important existing relationships with one or both parents during their time in care'.<sup>182</sup> Sloan suggests there will be cases where post-adoption contact cannot be found to be in a child's interests, but he argues 'where parenting has been merely negligent or deficient, perhaps as a result of mental illness, it is surely appropriate at least to investigate whether post adoption contact would serve the long term interests of the particular child'.<sup>183</sup> Neil believes that restrictive post adoption contact may in turn influence adopters to overlook the importance of a child's right to know their heritage and if appropriate open up a line of communication.<sup>184</sup>

In the absence of any letterbox, respondents were tormented by the thoughts that their children had suffered with the sudden severance of contact. They were

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<sup>179</sup> Department for Education, *Contact Arrangements for Children: A Call for Views* (2012), p.2, in Sloan (2014), p.383.

<sup>180</sup> Narey, M., The Narey Report: A Blueprint for the Nation's Lost Children, *The Times*, (5 July 2011).

<sup>181</sup> Thoburn, J, (1998), p.23.

<sup>182</sup> Lindley (1997), p.115.

<sup>183</sup> Sloan (2014) p.384.

<sup>184</sup> Neil, E, Beek, M, et al., *Contact Arrangements for Adopted Children: What can be learned from Research?* (2012) *Norwich, University of East Anglia Centre for Research on the Child and Family*, p.20.

unconvinced that their children did not miss them and did not experience feelings of intense loss which they feared may not be acknowledged by adult carers. These concerns are justified. Lindley argues that complete termination of contact between children and their birth families can create long term problems because 'when earlier attachments are disregarded, the feelings do not go away but are simply driven underground'.<sup>185</sup>

Some respondents had not received any contact letters following adoption, sometimes as long ago as nine years. Some spoke of feeling that their child had never existed or subsisted in a ghost like state where they felt 'haunted' by their presence<sup>186</sup> hearing them cry or seeing glimpses of them in their former bedrooms. Birth mothers in Howe's study reported similar feelings of 'wondering whether their children were dead or alive'.<sup>187</sup> This is detrimental to the mental health of birth mothers. Doreen Ward describes this state of being as 'a little like madness'.<sup>188</sup> Therefore openness, be it an occasional letter or the giving of a gift has been proven to be vitally important for the healing process.

The judiciary has deliberated extensively on the matter of post adoption contact, sometimes reaching differing conclusions. In *Re KD*<sup>189</sup> the House of Lords indicated that post-adoption contact was not an automatic right for birth parents. Similarly, Macfarlane LJ has reflected that 'for 30 years or more the courts have accepted the principle that adoption with little or no contact with the natural family

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<sup>185</sup> Lindley, B., 'Open Adoption-Is the Door Ajar?' (1997) 9 *Child and Family Law Quarterly* 115 at pp. 117-118.

<sup>186</sup> Maria BM17.

<sup>187</sup> Howe (1992), p.128.

<sup>188</sup> Ward, D in Mullender (1991), p.112.

<sup>189</sup> *Re K D (A minor) (Ward: Termination of Access)* [1988] AC 806.

provides the best option for the child'.<sup>190</sup> In *SB v County Council*<sup>191</sup> Wall LJ noted 'historically, post adoption contact between children and their birth parents has been perceived as highly exceptional'. However, a more generous view was held by Ward LJ in *In Re G*,<sup>192</sup>

'[The benefit] of contact is the benefit that comes from children simply knowing who the natural parents are. It is to remove the sense of the ogre, as they reach adolescence and begin to search for their own identity. That is why the current research is in favour of some contact in adoption'.

Despite extensive research promoting open adoption, Harris-Short notes that the courts remain indisposed because of the 'difficulty in reconciling a move towards openness with the traditional legal understanding of the nature of an adoption order'.<sup>193</sup> Sloan suggests that the perpetual debate on the benefits/detriments of open adoption probably centre on the fact that if adoption were the only solution to the child's long term needs then post adoption contact is unlikely to be appropriate.<sup>194</sup> Similarly, Ryburn argues that where adoption is non-consensual it causes circumstances where maintaining links is impossible due to 'the anxiety and fear it engenders in new carers and hostility provoked from the original family'.<sup>195</sup> These arguments place local authorities in a difficult position with regard to the promotion of contact and perhaps go some way to explain why contact after adoption does not always appear to be embraced by those empowered to facilitate it. Macfarlane LJ reflects that with the passing of the ACA there was an expectation by some judges<sup>196</sup> that contact 'which at most

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<sup>190</sup> Macfarlane, LJ (2017), p.24.

<sup>191</sup> *SB v County Council* [2008] EWCA Civ 535.

<sup>192</sup> *Re G (Adoption Contact)* [2003] 1FLR 270 at para 274.

<sup>193</sup> Harris-Short (2015), p.1042.

<sup>194</sup> Sloan (2014), p.389.

<sup>195</sup> Ryburn (1993), p.44.

<sup>196</sup> Notably Wall LJ in *Re P (A Child)* [2008] EWCA Civ 535.

concerned modest letterbox [may mean] a possible sea change under the Act'.<sup>197</sup>

His Lordship subsequently considered that a decade later there 'has been no sea change'.<sup>198</sup>

Beth Neil argues that reverting to practices which echo closed adoption could in fact encourage unauthorised contact,<sup>199</sup> three respondents in this research alone are having such contact with their children. This places risks on the stability of the children concerned and the emotional well-being of both mother and children. In her lecture, 'May I be your Facebook Friend?',<sup>200</sup> Dame Elenore King is scathingly critical of birth parents who seek out and contact their birth children on social media, but she does not acknowledge that children may in fact seek their birth parents in the same way. Equally Helen Oakwater has argued that social networking has left adopted children unsafe and unprotected from abusive and neglectful birth parents who she says will often stop at nothing to seek out their former children and disrupt their placement. In her view most birth parents 'lack empathy and cannot see the pain they have inflicted on their children'.<sup>201</sup> This stereotyped view was not at all evident in the findings of this research. Overwhelmingly the birth mothers were deeply troubled about the suffering their children had endured both in their care and from the separation.

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<sup>197</sup> Lord Justice Macfarlane (2017), p.10.

<sup>198</sup> Ibid.

<sup>199</sup> Neil (2012), p.21.

<sup>200</sup> Hershman/Levy Memorial Lecture: (June 2013) Mrs Justice Eleanor King DBE "*May I be your Facebook Friend?*" *Life Stories and Social Media*, <https://goo.gl/AXyuha> (Accessed 16 Nov 17).

<sup>201</sup> Oakwater (2012), p.12.

#### 6.14. THE LAW ON UNAUTHORIZED CONTACT WITH ADOPTED CHILDREN

It is a general understanding that it is illegal for birth parents to seek or attempt to contact their child once an adoption order has been made. However, there appears to be no statutory provision which creates such an offence nor cites a penalty. Recently there have been media reports on the problems of birth families making unauthorized contact with adopted children via social networks.<sup>202</sup> There have been suggestions that birth parents may be compelled to 'sign a contract'<sup>203</sup> agreeing not to try and seek their children on social media. From a legal perspective, the qualified aspect of there being no actual statutory provision may be that when the adoption order is made it has the effect of extinguishing parental responsibility in the birth parent and vesting it in the adoptive parent. Consequently, any unauthorized contact would not be illegal *per se*, but if it was deemed inappropriate it may result in the courts issuing an injunction barring birth parent(s) from contacting the child, a breach of which would result in a criminal offence. It might also be written into the precise terms of any adoption order,<sup>204</sup> judgment or agreement that contact is prohibited which then would obviously criminalise any further contact.<sup>205</sup> There is scarce literature available on the matter of injunctions, with the exception of extrajudicial observations from Lord Wilson, who himself imprisoned birth parents when they persistently breached an injunction imposed to prevent their harassment of their children and the adoptive family. Lord Wilson emphasized that unmanaged contact can be devastating to

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<sup>202</sup> Macdonald, V., Adopted children face anguish as birth parents stalk them on Facebook, *The Guardian* (23 May 2010).

<sup>203</sup> Ibid.

<sup>204</sup> The court can attach conditions to an adoption order concerning the child's upbringing. Welstead (2008), p.273.

<sup>205</sup> Discussion with supervisor Jason Lowther (31 May 2017).



the child's welfare and heightens the risk of disruption of the placement.<sup>206</sup>

Therefore, 'secret' post adoption contact is an important finding and is a phenomenon that would benefit from further research into the scale and impact of its occurrence.

The courts have consistently expressed reluctance to make orders for contact. According to Wall LJ 'whilst post adoption contact is more common, the jurisprudence is clear and that the 'imposition' on prospective adopters of orders for contact with which they are not in agreement is extremely unusual'.<sup>207</sup> His Lordship referred to the crucial ingredient of successful contact, that of adoptive parents' willingness. So, the problem with court ordered contact is the potential that the adopters may negate it at any time following adoption. The onus is then on the birth mother to make further applications to court. This can open yet another course of litigation. It is questionable whether such legal action would benefit any of the parties concerned, therefore out of court contact arrangements seem preferable. Where it has been agreed that contact is in a child's best interests, Pam Hodgkins puts forward the essential elements that need to be established early on, these are: a shared commitment to keeping in touch, this means both adopters and birth parent(s) commit to a plan with a positive commitment not to lose touch. All parties should have access to support, assistance, guidance and mediation if needed; with a willingness to be flexible and prepared to adjust for the benefit the children involved. There is a need for meaningful acceptance that being in touch is preferable to not being in touch in the long term. There should be a readiness to overcome problems to achieve this

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<sup>206</sup> Lord Wilson, (13 November 2014), p. 9.

<sup>207</sup> *Re R (Adoption: Contact)* [2005] EWCA Civ 1128 para 49.

objective, and finally, an attitude of openness and a sense of connection shared by all involved.<sup>208</sup>

#### **6.15. POST ADOPTION COUNSELLING: THE NEED FOR ROBUST SUPPORT FOR BIRTH MOTHERS**

The 1992 *Adoption Law Review* included recommendations for birth parent support and counselling. It stated that ‘agencies should have a statutory duty to ensure parents of a child whom it is proposed to place for adoption, are offered full opportunities to receive advice and counselling’.<sup>209</sup> Accordingly, the law makes provisions for counselling for birth families.<sup>210</sup> Charlton stresses that effective counselling must be independent and not associated to the agency that removed the children.<sup>211</sup> However, the findings showed that a number of local authorities provided ‘in-house’ counselling<sup>212</sup> which birth mothers unsurprisingly were averse to accepting. Most of the birth mothers either approached other services for counselling or did not receive it at all.

The provision of counselling following adoption is crucial. Birth mothers’ needs are complex and better therapy and support should be made available. The lack of services available to birth mothers has been criticised by Memarnia<sup>213</sup> and

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<sup>208</sup> Hodgkins, P., *Keeping in Touch: A different way of looking at post adoption contact issues*, in Douglas (2003), pp.156-157.

<sup>209</sup> Adoption Law Review (November 1992), para 28(6).

<sup>210</sup> AAR Regulation 14 provides the ‘Requirement to provide counselling and information for, and ascertain wishes and feelings of, the parent or guardian of the child. 14 (1) The adoption agency must, so far as is reasonably practicable (a) provide a counselling service for the parent or guardian of the child’. Additionally, ASS Regulation 4(2) provides ‘Counselling, advice and information must extend to (a) children who may be adopted, their parents and guardians’. Standard 12.6 provides that birth parents will be supported with counselling to play an active part in their child’s adoption’.

<sup>211</sup> Charlton (1998), p.5.

<sup>212</sup> See Chapter Three pp.158.

<sup>213</sup> Memarnia (2015), p.310.

Alpert.<sup>214</sup> Memarnia argues that birth mothers' grief is 'disenfranchised'<sup>215</sup> and following adoption they are left alone to cope. She also found that birth mothers' emotions about having their children removed are treated as insignificant.<sup>216</sup> Douglas and Philpot argue that counselling should not be a discretionary service 'support for birth mothers is a vital part of a comprehensive adoption services, not least because birth mothers who have lost children often go on to have more children'.<sup>217</sup> Twelve respondents had subsequent children following the adoption. Some said they felt 'overwhelming guilt'<sup>218</sup> that they had 'replaced' their adopted children. Others felt bitter regret that they were now in a position where they could have cared for their adopted children. Some women were fiercely over-protective to the point that they worried it was affecting their child's development. Charlton believes these struggles to parent subsequent children have their roots: firstly 'in birth parents disabling fears that subsequent children may be removed', and secondly 'feeling that they could have done more to prevent the adoption with a deep-seated feeling of guilt and anxiety which all requires therapy'.<sup>219</sup> Neil argues that supporting birth mothers with counselling is particularly important where they are having post adoption contact. Effective counselling and support will have a positive bearing on their ability to manage this contact and subsequently this will enhance the indirect relationship they have with their adopted child.<sup>220</sup>

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<sup>214</sup> Alpert, L. T., 'Research Review: Parents' service experience- a missing element in research on foster care case outcomes' (2005) 10(4) *Child and Family Social Work* 361 at p.366.

<sup>215</sup> Memarnia (2015), p.310.

<sup>216</sup> Ibid. p.305.

<sup>217</sup> Douglas (2003), p.111.

<sup>218</sup> Jessica BM13.

<sup>219</sup> Charlton (1998), pp.4-5

<sup>220</sup> Neil (2013), p.192.

The findings on incidents of depression in respondents who had no counselling correlate with studies on relinquishing birth mothers. In Logan's study, many birth mothers suffered from clinical depression where there were high incidences of absence of counselling<sup>221</sup> In the 1990s Merry Jones interviewed 70 birth mothers in the United States who relinquished their babies. From her findings Jones identified 'Birth Mother Syndrome'.<sup>222</sup> This comprises of several indicators common in her sample. A number of these symptoms were described by the respondents in the current study. These were: signs of unresolved grief, post-traumatic stress disorder, low self-esteem, impeded emotional development, self-punishment (ranging from social isolation to physical self-harm or eating disorders) and vacillating between various extremes (similar to symptoms of bi-polar disorder).

Neil et al published research findings on the counselling and supporting of birth relatives. They argue for robust support services both emotional and practical, throughout the adoption process. There should be adequate advice and information on the process of adoption including post adoption contact, advocacy and peer support. Neil found that the costs of supporting birth relatives was modest, and those who had counselling possessed better mental health and coped better with the adoption. Birth parents identified a preference for an independent support worker not connected to social services. Practical support included home visits, telephone calls at crisis moments, having someone to offer support through difficult events like court hearings or the final contact with the child. Birth parents' refusals of help were not disregarded. For many people it is necessary that agencies are more proactive in encouraging them to use

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<sup>221</sup> Logan (1996), p.618.

<sup>222</sup> Jones, M., *Birthmothers: Women Who Have Relinquished Babies for Adoption Tell Their Stories*, (1993), p.272.

services'.<sup>223</sup> Neil argues that 'services should focus on empowering birth parents to express and process their past experiences and emotions, and also look forward in terms of understanding, valuing and enacting positively their changed role as birth relative'.<sup>224</sup>

The adoption of their children had a profound impact on birth mothers' existence. Many perceived adoptions as an act of violence<sup>225</sup> towards them and their children and thus were deeply traumatised. Their children were often their anchor points in an unstable and chaotic environment. When their children left they were stripped of the identity they had managed to forge from their own damaged childhoods. For some, the months of court proceedings, dealings with professionals, not seeing their children, and having their lives dissected and discussed culminated in a breakdown. In the aftermath they looked for someone to help them pick up the pieces of their lives, but there was no one. They were left to face what was left of their lives on their own. It is unsurprising that so many women ended up in long stay mental health units. There were a number of instances where birth mothers physically searched for children or convinced themselves their children had died, holding their own memorial services. These are grieving reactions, but as Howe et al point out, a person's capacity to manage each stage of grief is affected by the behaviour and attitudes of other people.<sup>226</sup> Because birth mothers are aware that their children are probably still living the

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<sup>223</sup> Neil, E, Cossar, J, Lorgelly, P, Young, J., *Helping Birth Families: A Study of Service Provision, Cost and Outcomes*, *Centre for Research on the Child and Family School of Social Work and Psychology University of East Anglia*, (DCSF-RBX-10-05 March 2010), pp. 6-7 <https://goo.gl/LMksHH> (Accessed 8 September 2017).

<sup>224</sup> Neil (2013), p.198.

<sup>225</sup> Adoption as an act of violence towards women has been cited by some feminist writers, see, Shawyer (1979).

<sup>226</sup> Howe (1992), p.29.

grieving process is confused.<sup>227</sup> Therefore is it important that they are offered and provided with therapy which allows them to understand and live with their grief and accept that it may or may not improve over time.

Charlton's 'birth mother philosophy' is based on five beliefs. I would argue that these 'philosophies' should underpin the professional practice of supporting birth mothers:

- It must be recognised that birth mothers are parents for life even if they are prevented from parenting their children.
- They have the right to be well represented and supported when there are legal conflicts to determine their child's future.
- Adoption is necessary for some children but adopted children have the right to form a true identity, birth mothers have a role to play in their children's future and therefore openness should be mediated along a continuum.
- Flexibility is needed to allow a child to feel secure in his adoptive placement but also to have access to information about his birth family's life either directly or through a third party and the birth mother should be given the opportunity to provide information.<sup>228</sup>
- Support for birth mothers should be independent of the statutory framework and with no prior knowledge of the birth mother's case. All support should be designed to empower and help her make informed choices.<sup>229</sup>

These philosophies and the other recommendations in this chapter represent what could be argued as 'ideals'. These are standards or benchmarks of which should be expected in adoption practice within the courts, local authorities and other relevant agencies. It should be recognised that to achieve these standards, and in order to meet the expectations of the law it would require substantial investment in terms of both financial and personnel. For birth mothers to benefit from the provisions within the statute there would need to be significant reform by the government which aims to prioritise their needs. With the capital focus

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<sup>227</sup> Ibid. p.31.

<sup>228</sup> Charlton (1998), pp.28-29.

<sup>229</sup> Ibid. p.30.

being primarily placed on settling children with adopters, it is unlikely that the situation will improve any time soon. However, for a fairer process which protects the human rights of birth mothers we continue to look towards the judiciary and their efforts to achieve proportionally in the face of unjust practice in care and adoption proceedings.

#### **6.16. THE CURRENT LAW AND POLICY ON ADOPTION: WHAT DOES THE FUTURE HOLD FOR BIRTH MOTHERS?**

The adoptions, which were the experiences of the respondents, in this thesis occurred prior to some important decisions by the senior courts on the matter of adoption. Because of the timing of these decisions they are not wholly applicable to the findings because all the adoptions occurred before 2013. Nevertheless, it is important to complete this discussion with an overview on the current focus on adoption.

In 2013, adoption practice began to attract judicial criticism and this in turn led to protracted public debate. A number of the issues raised by birth mothers in this research may be ‘symptomatic’ of those that were cited as particularly problematic in adoption proceedings, with particular reference to compulsory adoptions. In 2013, *B (A Child)*<sup>230</sup> was heard in the Supreme Court. The case concerned an appeal by parents concerning the application of the criteria for making a care order under section 31 of the Children Act 1989 (which in this case was made with a view to adoption), when the risk is of future psychological or emotional harm, and the role of the appellate courts once the trial judge has made an order. The child concerned was removed from her parents at birth. The mother

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<sup>230</sup> *B (A Child) (Care Proceedings: Appeal)* [2013] UKSC.

was in an abusive relationship with her stepfather and had several criminal convictions for dishonesty along with diagnosis of 'factitious disorder'.<sup>231</sup> The child's father had many serious convictions and had spent a number of years in prison. Whilst the child resided on an interim care order the parents had contact with her and had demonstrated a great deal of love and commitment to their daughter. However, the trial judge was concerned that if the child was returned to her parents she may grow up to copy her mother's manipulative and dishonest behaviour, and further, she may be vulnerable to her mother's factitious disorder and be presented for unnecessary medical treatment. Accordingly, the trial judge felt the only way the feared harm could be prevented was with a care order with a view to adoption. This judgment was subsequently upheld by the Court of Appeal and the parents appealed to the Supreme Court.

The Supreme Court dismissed, with Lady Hale dissenting. The pertinent issues from the judgment are the demands of Art 8 in protecting the rights of the family in the context of adoption proceedings. Lord Neuberger stated that adoption against parents' wishes should be a last resort, and despite a child's welfare being paramount, their interests may also include being raised by their natural family. Another key issue to come from *B* is the demand that before an adoption order is decided on as the right course of action, the court must be satisfied that there is no possibility that appropriate help and support can be provided by any agency empowered to do so.<sup>232</sup> Lady Hale presented a strong dissenting speech.

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<sup>231</sup> Factitious disorder is a psychiatric condition which involves the deliberate exaggeration of symptoms and the creation of a false medical history.

<sup>232</sup> Sloan, B., 'Loving but Potentially Harmful Parents in the Supreme Court' (2014) 73 *Cambridge Law Journal* 28 at p. 30.



In particular, on the matter of removing children through the fear of future emotional or psychological harm,

‘We are all frail human beings, with our fair share of unattractive character traits, which sometimes manifest themselves in bad behaviours which may be copied by our children. But the State does not and cannot take away the children of all people who commit crime, who abuse alcohol or drugs, who suffer from mental illness or disabilities’.<sup>233</sup>

Lady Hale was primarily concerned that the child was to be adopted based on a mere possibility she would be harmed by her mother. This she felt was impossibly broad. She could not see that nothing else would do except adoption, because nothing else had been tried. Finola Moss is deeply critical of the Supreme Court’s decision to dismiss the appeal. She calls it ‘a severe blow for justice in the care courts and a powerful endorsement of the State’s totalitarian power to decide who is allowed to parent’.<sup>234</sup>

Lady Hale’s dissent was influential in the subsequent case of *Re B-S*.<sup>235</sup> Here, the Court of Appeal clarified the law concerning non-consensual adoption. The key points of the judgement were: adoption is a last resort,<sup>236</sup> there must be consideration of article 8 positive obligations on the state to try to keep families together,<sup>237</sup> the least interventionist approach is preferable and the child’s interests are paramount, but those interests may include being brought up by its natural family.<sup>238</sup> The court were concerned that the evidence and reasoning regularly advanced in favour of adoption was inadequate and ‘too many

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<sup>233</sup> para 143.

<sup>234</sup> Moss, F., Case Comment: *Re B (A child)* [2013] UKSC 33 <http://uksblog.com/case-comment-in-the-matter-of-b-a-child-2013-uksc-33/>. (Accessed 21 Feb 2018).

<sup>235</sup> *Re B-S (Children) (Adoption: Leave to Oppose)* [2013] EWCA Civ 1146.

<sup>236</sup> para 22.

<sup>237</sup> para 18.

<sup>238</sup> para 26.

judgments' were of poor quality. Munby P, in referring to the court's unease with the way first instance judges were approaching adoption application,

'Lurking behind the present case, and indeed a number of other cases before appellate courts, one can sense serious concerns and misgivings about how courts are approaching cases of what for convenience we call 'non-consensual' that is where as placement or adoption order has been made without parental consent.<sup>239</sup>

The President made it clear that,

'we have real concerns, shared by other judges about the recurrent inadequacy of the analysis and reasoning put forward in support of the case for adoption, both in the materials put before the court by local authorities and guardians and also in too many judgments. This is nothing new. But it is time to call a halt'.<sup>240</sup>

Prior to *Re B-S*, in *K v The London Borough of Brent*,<sup>241</sup> Ryder LJ found that the social worker's plan for adoption and the judge's subsequent decision were not adequately evidence based. Further, the inference that judges should take a more holistic approach to analysis, considering the risks and benefits of each option carefully was outlined in *Re G*,<sup>242</sup> where MacFarlane LJ stated,

'The judicial exercise should not be a linear process whereby each option...is looked at in isolation and then rejected because of internal deficits...with the result that...the only option left...is the most draconian and...is therefore chosen without any particular consideration of whether there are internal deficits within that option'.<sup>243</sup>

From *Re G* it can be established that adoption should not be presented as the first choice or the only option based on the reasoning that anything short of adoption would fail. The *proper*<sup>244</sup> approach is to evaluate the real benefit of all possibilities and select the option most beneficial to a child's welfare. In *Re HA*<sup>245</sup>

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<sup>239</sup> para 15.

<sup>240</sup> para 30.

<sup>241</sup> *K v The London Borough of Brent* [2013] EWCA Civ 926.

<sup>242</sup> *Re G (Care Proceedings: Welfare Evaluation)* [2013] EWCA Civ 965.

<sup>243</sup> para 29.

<sup>244</sup> Emphasis added.

<sup>245</sup> *Re H A (A Child)* [2013] EWHC 3634 (Fam).

Baker J, in referring to the judgement in *Re B-S*, reiterated the need to ensure *all options* are meticulously considered as required by the welfare checklist in ACA s1(4).

However, since the law was clarified in *Re B-S* there is evidence that the number of applications for adoption placements has dropped. Between September 2013 and June 2014, local authorities determined that 47 per cent less children should be adopted compared to applications made up to 2012.<sup>246</sup> This reduction was addressed by the National Adoption Leadership Board (NALB) who said 'In the last twelve months we have witnessed a significant reduction ...in the number of decisions made by local authorities to pursue care plans for adoption'. The NALB considered the fall in adoptions numbers as a disaster on the part of local authority adoption services. They subsequently published somewhat defensive guidance which set out reasons, in the form of 'myths', why the judgment in *Re B-S* should not set a precedent for local authorities to initiate fewer adoptions. The NALB did not consider the ruling in *Re B-S* as a change in the law arguing 'the judgments do not alter the legal test for adoption'.<sup>247</sup> As a leader on adoption policy the NALB appear committed to reversing the impact *Re B-S* has had on reducing the number of planned adoptions.

The NALB's assertion that *Re B-S* did not constitute a change in the law has since been supported by the courts. Despite previous decisions appearing to

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<sup>246</sup> Doughty, J., 'Myths and misunderstanding in adoption law and policy' (2015) 27 *Child and Family Law Quarterly* pp. 331-353.

<sup>247</sup> National Adoption Leadership Board, *Impact of Court Judgements on Adoption: What the Judgements do and do not say*, (November 2014), p.1 <https://goo.gl/cmFmTt> (Accessed 9 Sept 2017).

broaden judicial approaches to considerations of permanence, in *Re R*<sup>248</sup> Munby P stated,

‘I wish to emphasise, with as much force as possible, that *Re B-S* was not intended to change and has not changed the law. Where adoption is in the child’s best interests, local authorities must not shy away from seeking, nor courts from making, care orders with a plan for adoption, placement orders and adoption orders.’<sup>249</sup>

Following *Re B-S* the courts have continued to place weight on adoption as the ideal means of offering permanence to children. This in turn means that a future reduction in the number of adoptions is unlikely, albeit with ‘mindfulness’ in the courts of the importance of thorough analysis, which may have incrementally become ‘sloppy’<sup>250</sup> since the ACA. It is then possible that these decisions, whilst not changing the law, gave practitioners and those with investment in adoption, pause for thought. Whether or not Bainham’s view that ‘*Re B-S* and its satellite jurisprudence gives new hope to parents where little existed before’<sup>251</sup> rings true is something commentators will undoubtedly be waiting to consider with future court decisions.

## THE GOVERNMENT’S LATEST ATTEMPT TO INCREASE ADOPTION

In January 2016 the Government published a press release stating that,

‘A fundamental change to the law will make prioritising lifelong stability for vulnerable children with a loving family a legal requirement. Over the last 2 years, the number of decisions for adoption made by courts and councils has fallen by around 50% - almost half. The government has issued important guidance to make clear that where adoption is in the best interests of the child, they must be placed with their new family as soon as possible.’<sup>252</sup>

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<sup>248</sup> *Re R (a child)* [2014] EWCA Civ 1625.

<sup>249</sup> para 44.

<sup>250</sup> As per Munby P in *Re B-S (Children)* [2013] EWCA Civ 1146.

<sup>251</sup> Bainham, A., Markham, H., ‘Living with *Re B-S*: *Re S* and its implications for parents, local authorities and the courts’ (2014) *Family Law* 991 p.998.

<sup>252</sup> Department for Education, Education Secretary unveils plans to change adoption law, (14 January 2016), <https://goo.gl/vHKZHq> (Accessed 9 September 2017).

This statement was followed with the promise that new legislation would compel local authorities and the courts to place children with those most able to care for them until adulthood. The government pledged 200 million aimed at improving and increasing adoption. In March 2016, the Department of Education published the Policy Paper *Adoption: A Vision for Change*<sup>253</sup> which included outlines for future legislation in respect of the court and local authorities' options for permanence with the following provisions,

'Whether the quality of care on offer under the different potential placements being considered will be sufficient to meet the child's needs, especially in light of the previous abuse and neglect the child may have suffered and their need for high quality care to overcome this; and b) whether the placement will offer this quality of care throughout the child's childhood (until they are 18) rather than right now or just in the immediate future'.<sup>254</sup>

Accordingly, in April 2017, the Children and Social Work Act (CSWA) received Royal Assent. The Act made changes to the law on adoption in two areas. Section 8 amends the definition of 'permanence provisions of a section 31A care plan' in section 31(3B) of the CA 1989, setting out the long-term plan for the upbringing of the child. This now includes any of the following: the child to live with a parent or wider family; adoption; other long-term care provision. Insofar as adoption is concerned, section 1(4) lists the matters the court and adoption agencies must have regard to when reaching decisions relating to the adoption of a child. Section 9 of the CSWA 2017 amends section 1(4)(f) of the ACA 2002 so that the court is also required to have regard to the views of any prospective adopter with whom the child is placed. This means that the courts are bound to consider the child's relationship with their prospective adopter in accordance with the welfare

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<sup>253</sup> Department for Education, *Adoption: A Vision for Change*, (March 2016), <https://goo.gl/HNNqXW> (Accessed 9 September 2017).

<sup>254</sup> Ibid. p.23.

checklist when deciding whether to make an adoption order or permit leave to a parent to oppose an application.<sup>255</sup>

Barnett argues that ‘in many ways, there is not anything of particular note in that provision alone and it makes little or no impact on the decisions that the courts were already making’.<sup>256</sup> He goes on to say that there is no evidence that the courts have previously ‘openly disregarded’ children’s relationships with potential adopters and this provision ‘merely ‘assists, as it always does, for these specific considerations to be enshrined in the statute’.<sup>257</sup>

Although there have been subtle rather than significant changes to the law intending to direct the minds of the judiciary towards permanence, some judges have begun to openly question the core beliefs surrounding adoption. MacFarlane LJ asks,

‘Is adoption still the best option? A system which has adoption against the wishes of the natural parents as an outcome, which is often chosen as best meeting the welfare needs of children, must have confidence that that model of adoption does indeed meet the lifelong needs of children.’<sup>258</sup>

He continues ‘my thesis that the current balance between child protection and human rights is largely sound is only tenable if adoption is, indeed, the most beneficial outcome for children, does that continue to be the case today’.<sup>259</sup>

Similarly, Parker J said, ‘I accept adoption is not a universal solution every time a parent is not able to parent a child to a good enough standard’.<sup>260</sup>

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<sup>255</sup> Barnett-Thoung-Holland, A., Adoption and The Children and Social Work Bill, *Family Law Week*, (15 September 2016), <https://goo.gl/EbghzE> (Accessed 9 Sept 2017).

<sup>256</sup> *Ibid.*

<sup>257</sup> *Ibid.*

<sup>258</sup> Lord Justice Macfarlane (2017), pp.13-14.

<sup>259</sup> *Ibid.*

<sup>260</sup> Parker J’s judgment repeated by Munby P in *Re B-S (Children)* [2013] EWCA Civ 1146, at para 90.

It could be asked if there is a gradual change of culture towards adoption within the judiciary. Macfarlane LJ suggests there may be, reflecting that,

‘Making an adoption order radically shifts the tectonic plates of an individual’s legal identity, and those of others, for life. That is a very big thing to do in order to protect the individual from harm during their formative years. Is an order of that magnitude necessary? how do we know that it is indeed the best outcome for the child whose future life is being decide by the court’?<sup>261</sup>

Birth mothers tend to be the forgotten party in adoption, yet Lord Wilson demonstrates a sensitivity not usually evident within the judiciary. He portrays the complex feelings birth mothers experience,

‘Take the birth mother; there surely remains within her a mixture of raw emotion, a sense of amputation; of guilt that she failed to bring up her child; of anger about the court order which dispensed with her consent; of anxiety about whether the adopters are properly caring for him or an inability to do anything whatsoever to help him; of regret, particularly if her circumstances have improved and have led her to consider, in retrospect, that she could have cared for him perfectly well; and, overarchingly, of loss. The birth mother has to cope permanently with all of this’.<sup>262</sup>

Lord Wilson also recognises the omnipotence of the adoption order and the profound long-term effects on families,

‘I never gave much attention to the emotional repercussions of making adoption orders of which I have made over 50 during my years in the Division. I fear that I failed fully to appreciate that an adoption order is not just a necessary arrangement for the upbringing of some children. Sir James Munby, the President of the Division, said recently that adoption has the most profound personal, emotional, psychological, social and perhaps also cultural consequences. I totally agree. The order is an act of surgery which cuts deep into the hearts and minds of at least four people and which will affect them, to a greater or lesser extent, every day of their lives’.<sup>263</sup>

These narratives perhaps say more about the genuine impact of adoption than Government Policy Manifestos have succeeded in doing.<sup>264</sup> Unless adoption is

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<sup>261</sup> Macfarlane, LJ, (2017), p.24.

<sup>262</sup> Lord Wilson (13 November 2014), p. 16-17.

<sup>263</sup> Ibid. pp. 18-19.

<sup>264</sup> See, An Action plan for Adoption: Tackling Delay, (2011).

spoken about openly by those who are personally affected by it, their experiences will continue to be taboo subjects. Adoption myths remain unchallenged because of the 'secrecy' within family courts,<sup>265</sup> and the media is responsible for sensationalising adoption. This in turn influences society on only those limited aspects which the media reports on.<sup>266</sup> But, we should be mindful that 'adoption is a living thing that requires real people to engage in real issues'.<sup>267</sup> Harris-Short reflects that,

'Behind the 'good news' of adoption lies sadness and despair. A price must be paid for the creation of the adoptive family, that price is paid by the birth family. In legal terms, the child is lost to them forever. Often vulnerable and marginalised, it is usually the birth mother who pays the greatest price, many facing a lifetime of unresolved grief'.<sup>268</sup>

Therefore, at the very least, birth mothers' legal, *and human*, rights must be respected, and more robustly protected.

## 6.15. CONCLUSION

This chapter has discussed the findings in relation to previous research and jurisprudence from the family courts. It has established that birth mothers have been, for the most part, treated unfairly in the adoption process. It has considered areas where local authorities and other public bodies have overlooked their human rights obligations and have thus given grounds for complaints under the HRA. With the support of previous research, it has suggested undertakings which

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<sup>265</sup> A topic that is beyond the scope of this thesis. Family courts, which deal with adoption and local authority intervention to protect children, were opened to the media in 2009, but hearings largely remain secret. Judges can limit media attendance, there are tight restrictions on what – if anything – can be reported, the media have no access to documents and can be ordered to leave the court on the decision of the judge or magistrate. See, 'New Practice Guidance to increase transparency in Family Courts', *Family law*, (Jan 2014), <https://goo.gl/oPvqC9> (Accessed 16 Nov 2017).

<sup>266</sup> For example, see, Selkirk, C, The real story behind 'forced adoptions', *The Independent*, (22 July 2014).

<sup>267</sup> Simonds, J., *Adoption is about People*, in Douglas (2003), p.254

<sup>268</sup> Harris-Short (2015), p.904.



could improve practice and ensure birth mothers are able to exercise their rights and seek a remedy if these rights are denied. However, it has been observed that there are limitations attached to adoption practice. The ideals may appear untenable because of the need for substantial financial and personnel investment which remains unlikely where funds tend to be invested in children's adoptive placements. Finally, the chapter has considered whether the recent judicial disquiet about adoption and understated law reform will have any effect on birth parents' experiences of adoption in general, this is not known, but it is argued that more should be done to ensure adoption is a transparent process where all those affected have a voice. This research plays a small part in that process.

# **CONCLUSION**

## **1.0. RESEARCH OBJECTIVES: A SUMMARY OF FINDINGS AND CONTRIBUTIONS TO KNOWLEDGE**

This thesis has emphasised the importance of empirical research into those personally affected by adoption, with the aim of balancing the theoretical elements of the statutory law with the practice. The key aims of the research were to give birth mothers the opportunity to speak of the impact adoption has had upon their lives, and from that, to measure the disparity between the application of the law and practice. This was achieved by focusing on the perspectives of birth mothers, who are rarely centred on in discourses of professional practice in this field.

This thesis provides insight and raises awareness about birth mothers' experiences of the legal and administrative process of adoption. From the research findings, a great deal has been learned about the impact of adoption, both social and legal, on birth mothers. The empirical research has achieved the aims and objectives of the thesis. The findings were presented in a narrative form which gave birth mothers a voice, whilst evidence of the inconsistency between the law and the practice could be extracted from their discourses.

The findings were introduced with respondents' perspectives on why adoption was the outcome for their children. The reasons birth mothers gave for adoption correspond with previous research, finding evidence of domestic violence, mental illness and substance abuse leading to removal of the children involved. The link between child protection interventions, poverty and lower socio-economic

classes is well documented<sup>1</sup> and this research found a strong interrelationship between social deprivation and children being removed from their families, with the majority of respondents being dependent on state benefits. This was followed with an exploration of stigmatizing. It was found that birth mothers experienced collective blaming from authorities and from their own families. This is known theoretically as 'Mother Blaming' and it was often the precursor for enduring stigma which birth mothers felt originated from professionals involved with them and their children. Stigma emerged in two forms: legal and social. Legal stigmatizing meant birth mothers could never be free of the shadow of child protection investigations even where they had proven themselves to be capable mothers with subsequent children. Social stigmatizing created a number of interconnected and long term problems, including the denial of their adopted child, isolation from society, living in fear that the adoption would be discovered, and concerns they would be labelled as child abusers. The subsequent suppression of emotions connected to these problems caused depression and low self-esteem which would be likely to affect birth mothers' relationships with future children they have.

The second part of the findings focused on the law in the ACA and the subordinate legislation. There was some clear evidence of good practice, but respondents who experienced this believed it was initiated through the kindness and compassion of professionals rather than from statutory requirements. The data revealed deficiencies in the practice of agencies who are empowered under

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<sup>1</sup> Bywaters, P., Bunting, L, et al., The relationship between poverty, child abuse and neglect: an evidence review *The Joseph Rowntree Foundation*, (March 2016).

the ACA to carry out adoption work. The key findings demonstrated significant unfairness and inadequacies with both the application of practice under the law and administrative procedures. It cannot be ignored that birth mothers were seen as highly insignificant to their children whilst their legal rights were illusive rather than substantive. Consequently, any exercise of rights felt inconceivable to birth mothers and many were unaware they possessed any rights.

### **1.1. LIMITATIONS OF THE RESEARCH**

Although this thesis has contributed to the way birth mothers' experiences of adoption are understood, the research is not large scale enough to give an inclusive representation of all birth mothers. This work provides only a snapshot of adoption practice which corresponds with previous research and makes some new discoveries. It is of note that the recent law changes in the Children and Families Act 2014, the introduction of a 26 week time limit in care proceedings and 'foster for adoption'<sup>2</sup> along with judicial guidance, may have impacted on adoption practice insofar as a number of issues identified by the birth mothers in this thesis would no longer apply, in particular that of long delays in care/placement proceedings and evidence placed before the court by local authorities in compulsory adoption proceedings.<sup>3</sup> The recruitment methods also limit the generality of the findings, which in this case were online forums and parent advice services. It may be that only birth mothers who experienced certain negative characteristics of adoption frequent online advice forums, seeking redress for the injustice they have suffered. This limitation was balanced by the identification of typologies. Respondents who clearly expressed their motivation

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<sup>2</sup> See p.29.

<sup>3</sup> As per the guidance in *B (A Child) (Care Proceedings: Appeal)* [2013] UKSC and *Re B-S (Children) (Adoption: Leave to Oppose)* [2013] EWCA Civ 1146.

for participation were recruited. It is argued that this generated the most reliable and valid data because of the chosen typologies' ability to reflect and understand why adoption had happened. This recruitment method also allowed for birth mothers to enquire and agree to the research with total autonomy, there were no gatekeepers involved, thus respondents had full control over their participation. Although the data is subjective and based on birth mothers' interpretations of their world, this is the basis of qualitative research and is an accepted method of investigating social phenomena.

## **1.2. RECOMMENDATIONS FOR GOOD PRACTICE: THE RIGHT TO LEGAL REPRESENTATION**

The permanent removal and adoption of a child is a significant power exercisable by the state which must not be used arbitrarily. This is a fundamental concept of the Rule of Law.<sup>4</sup> Children sometimes need to be separated permanently from their parents and the UK uses compulsory adoption to provide a solution for this problem. It has been shown there is often insufficient attention paid to the legal protection of birth mothers when adoption has been decided on. It does not matter how inadequate the parent is, the provision of expert legal advice must be accessible. Despite respondents having legal representation in court for care proceedings, following placement orders being made they were largely unrepresented and uninformed of their rights, to, for example, be kept informed and involved in the process of their child's adoption. This is a requirement under

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<sup>4</sup> See Dicey's conception of the Rule of Law. Dicey's first principle of the rule of law was that 'no man is punishable or can be lawfully made to suffer in body or goods except for a distinct breach of law established in the ordinary legal manner before the ordinary courts. In this sense the rule of law is based on the exercise by persons in authority of wide, arbitrary, or discretionary powers of constraint'. The word 'arbitrary' could connote a clear law, which was properly enacted by Parliament, but which might nonetheless be regarded as arbitrary if it was thought to infringe certain fundamental rights. Barnett, H., *Constitutional and Administrative Law*, (2017), p.63.

the legislation, yet there appears to be no enforcement and no sanction when these provisions are denied. Yet the provisions, however trivial they may seem, are of major significance to birth mothers to ensure a fair process.

Understandably local authorities have wide discretion in their adoption practices to ensure they are able to focus on and maintain the welfare of children. The law permits that a great deal of local authority decision making occurs outside of the court. For example, in circumstances where local authorities suddenly cut off contact without explanation. When this happened, birth mothers did not have solicitors because their legal aid had ended at the final care/placement order stage. This period of time when most legal representation ends, and the adoption process becomes effective, is when birth mothers are highly vulnerable to having their rights compromised. Therefore, the lack of dedicated legal advice and assistance at this time is of deep concern when the outcome is the permanent loss of a child.

All of the care and placement proceedings in this research were completed prior to the passing of the Legal Aid Sentencing and Punishment of Offenders Act 2012 (LASPO), therefore legal aid was awarded by the Legal Services Commission. On the first of April 2013, the Legal Services Commission was replaced by the Legal Aid Agency, and the cuts to legal aid imposed by LASPO took effect. For family law, the general position is that public law proceedings, such as care orders, remain in scope under Part 1, Schedule 1 of LASPO as 'non means or merit tested' for parents with parental responsibility. However, applications concerning the opposing of placement orders or adoption orders are means and

merit tested.<sup>5</sup> This means that where care proceedings have ended, and an application has been made for a placement order, the child's parents will not automatically qualify for legal aid if they wish to oppose it. An award of legal aid will depend on the strength of the case and any income the parents have. The extreme difficulties this can present for parents were raised in *D (A Child)*.<sup>6</sup> The parents, both of who had learning disabilities, had been refused legal aid on the 'merit ground' to oppose their child's placement order. Subsequently they had no public funding to face a local authority application for a placement order with a view to adoption. Sir James Munby P made it clear that it was,

'Unthinkable that the parents should have to face the local authority's application without proper representation. To require them to do so would be unconscionable; it would be unjust; it would involve a breach of their rights under Articles 6 and 8 of the Convention; it would be a denial of justice'.

He continued,

'A parent facing the permanent removal of their child must be entitled to put their case to the court, however seemingly forlorn. It is one of the oldest principles of our law, it goes back over 400 centuries to the earliest years of the seventeenth century, that no-one is to be condemned unheard. I trust that all involved will bear this in mind'.<sup>7</sup>

The respondents' experiences resonate with the President's observations. Even with legal representation, they felt powerless and ill equipped in the face of local authorities' arguments that their children should be adopted. At the point of placement orders being made, adoption may well be the *fait accompli*, therefore the requirement for robust legal representation, paid for by the state if necessary, is crucial. Failing to provide adequate legal help in care and placement

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<sup>5</sup> Legal Aid Agency, Scope of Family Proceedings under LASPO, p.1.

<sup>6</sup> *D (A Child) (No 2)* [2015] EWFC 2.

<sup>7</sup> para 20.

proceedings may result in a breach of parents' human rights under Art. 6 of the Convention, as held by the ECtHR in *P S and S v UK*<sup>8</sup> where,

'The assistance of a lawyer during the hearing of these two applications which had such crucial consequences for the applicants' relationship with their daughter was an indispensable requirement. Consequently, the parents did not have fair and effective access to a court as required by Article 6 of the Convention. There has, therefore, been a breach of this provision as regards the applicant parents'.<sup>9</sup>

### **1.3. THE RIGHT TO A REMEDY FOR POOR DECISION MAKING, PROCEDURAL ERROR OR UNFAIR PRACTICE**

Areas of adoption law which are particularly problematic if rights are negated by incorrect procedure are: consent to adoption, being involved, supported and having wishes and feelings listened to through the adoption process, post placement termination of contact and post adoption contact. The findings showed that birth mothers were powerless where unfairness and inadequate procedure occurred. Available remedies for birth mothers in the event of poor decision making, procedural error or unfair practice are virtually non-existent. For example, judicial review is a court based remedy when an individual wishes to claim that a local authority has acted *ultra vires*, but it is rare for this to be utilised in public child law.<sup>10</sup> Judicial Review is also only able to deal with procedural breaches and not problems within the system which is the primary problem in adoption

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<sup>8</sup> *P C and S v United Kingdom* (2002) 56547/00 ECHR 604.

<sup>9</sup> para 100.

<sup>10</sup> As per Blair J in *A and S v Enfield London Borough Council* [2008] 2 FLR 1945.

There is no case authority on judicial review of the administrative process of adoption but see *AB & Anor, R (on the application of) v The London Borough of Haringey* [2013] EWHC 416, where the court made a quashing order on a local authority's decision to undertake an enquiry pursuant to section 47 of the Children Act 1989 into whether a child was suffering from significant harm.



processes.<sup>11</sup> Even if it were possible for an application for judicial review to be lodged, the time limits imposed are short and strictly regulated. Under Civil Procedure Rule Part 54.5(1) an individual must make an application for permission to apply for judicial review not later than three months after the grounds upon which the claim is based first arose. For the birth mothers involved in this research it was years and not months before they came to realise that they had been unfairly treated; further, the idea of yet another course of litigation was repugnant to them, many commented that they never wanted to attend court again following the trauma they had experienced during their child's care proceedings. This concurs with Divine's assertion that parents who have suffered trauma through their interactions with the state will be unlikely to seek a remedy so soon after proceedings.<sup>12</sup>

The same limitations apply to applications under s7 of the HRA 1998.<sup>13</sup> Although there are examples of parents bringing actions against local authorities who have infringed individual's rights, such as in *C v Bury Metropolitan Borough Council*,<sup>14</sup> and more so recently in care proceedings,<sup>15</sup> there is no available data on s7 claims in administrative adoption procedure. Making claims against public bodies for breach of the HRA is a complex matter which has a number of implications. It has been argued that 'in most cases, pursuing an HRA application is simply not

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<sup>11</sup> Devine, L., *The limits of state power & private rights: exploring child protection & safeguarding referrals and assessments* (2017) p.146.

<sup>12</sup> Ibid. p.146.

<sup>13</sup> HRA s7(1) A person who claims that a public authority has acted (or proposes to act) in a way which is made unlawful by section 6(1) may (a)bring proceedings against the authority under this Act in the appropriate court or tribunal, or (b)rely on the Convention right or rights concerned in any legal proceedings, but only if he is (or would be) a victim of the unlawful act.

<sup>14</sup> *C v Bury Metropolitan Borough Council* [2002] 2 FLR 868.

<sup>15</sup> Stather, J., 'The Rise and Rise of Damages in Human Rights Claims' *Family Law Week*, (2015), <https://goo.gl/oD51Vc> (Accessed 26 Jan 2018).

commercially viable',<sup>16</sup> if for example, an individual is funding their own court costs, any award of damages may be significantly less than the cost of court proceedings.<sup>17</sup> The publicly funded claimant in a HRA claim who is also publicly funded in associated or connected proceedings under s25 LASPO, is vulnerable to a claim for recoupment of the costs of proceedings by way of statutory charge from any award of HRA 1998 damages, including access to legal aid.<sup>18</sup> It is also important to note that even in the event of a successful claim, the local authority's actions cannot be reversed, the clock cannot be turned back. It is therefore essential that local authorities should be held accountable throughout the adoption process and birth mothers should be made aware of their legal rights and entitlements from the outset. This accountability of the state is particularly important where there is a known risk of suicide. It is argued that this creates obligations under Art 3 of the Convention 'No one shall be subjected to torture or to inhuman or degrading treatment or punishment'. A duty of care exists which may begin when a local authority intervenes in a family's life and continues after a child has been placed for adoption.<sup>19</sup> Along with accountability, we are reminded of the state's obligation to respect human dignity as a core requirement under the human rights instruments and the common law. The judiciary consider

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<sup>16</sup> Child Protection Recourse, Human Rights Act 1998 (Oct 2014) <https://goo.gl/SDFBBY> (Accessed 26 March 2018).

<sup>17</sup> See *Anufrijeva v London Borough of Southwark* [2003] EWCA Civ 1406 para 59.

<sup>18</sup> The publicly funded claimant in a HRA 1998 claim who is also publicly funded in associated or connected proceedings, see section 25 Legal Aid Sentencing and Punishment of Offenders Act 2012, is vulnerable to a claim for recoupment of the costs of proceedings by way of statutory charge from any award of HRA 1998 damages. Child Protection Resource, (2014), <https://goo.gl/7DFbJn> (Accessed 28 Jan 2018).

<sup>19</sup> See the Supreme Court decision in *Commissioner of Police of the Metropolis v DSD Commissioner of Police of the Metropolis (Appellant) v DSD and another (Respondents)* [2018] UKSC 11.

these values to be crucial where the state is involved with vulnerable people whose freedom of choice has been inhibited.<sup>20</sup>

#### **1.4. COMPLAINTS AND REDRESS**

The CA 1989 places a duty on all councils to establish and publicise a procedure for the consideration of complaints made to them.<sup>21</sup> The Children Act 1989 Representations Procedure (England) Regulations 2006 sets out the processes that must be followed by local authorities when they consider representations and complaints about the services they provide.<sup>22</sup> The Regulations provide that certain adoption-related functions may be the subject of a complaint, those relevant here are: the provision of adoption support services, placing children for adoption, including parental responsibility and contact issues, duties on receipt of a notice of intention to adopt and a local authority considering adoption for a child.<sup>23</sup>

The findings showed that only two respondents out of the 32 had made a formal complaint on the advice of their solicitors. The two birth mothers who complained found the process complex, time consuming and impractical in terms of a redress. In most cases if a complaint against Children's Services is upheld, the complainant will receive a written apology from the relevant manager, along with information about what action the department will take to ensure that lessons have been learned. Whether this is satisfactory in the event of unfair treatment or erroneous procedure in adoption is questionable, Devine argues that the

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<sup>20</sup> As per Sir James Munby see page 87.

<sup>21</sup> CA 1989 s26 and s24(d).

<sup>22</sup> Department for Education, *The Children Act 1989 Guidance and Regulations*, (October 2014) p.88.

<sup>23</sup> Department for Education and Skills, *Getting the Best from Complaints Social Care Complaints and Representations for Children, Young People and Others*, p.6. (April 2007) <https://goo.gl/Gg7MsJ> (Accessed 28 March 2018).

inadequacy of redress in public child law causes 'severe and long lasting harm to families'.<sup>24</sup>

The complaint process is designed for service users; therefore, the procedure should be easy for individuals to access and understand. There should be adequate services available to assist the complainant in setting out clearly the issues they are unhappy with; this is of particular importance where the complainant has a special need or a disability. Further research is proposed on local authority complaints procedures where birth parents make a complaint about care or adoption related administrative decisions. Given that this procedure may be the only avenue that can be taken by birth parents in the event of a complaint about administrative procedures, much more needs to be known about the accessibility and effectiveness of the process.

### **1.5. RECOMMENDATIONS FOR CONSIDERATE PRACTICE**

It was found that stigmatization is a pervasive and ingrained problem for birth mothers. This was overwhelmingly identified as originating from the professionals involved in the adoptions. Institutionalized stigmatizing within the helping agencies causes significant disadvantages for women. Birth mothers who were stigmatized rarely found the strength to step outside of their shame and guilt and thus their quality of life was severely restricted. This in turn impacted negatively on their relationships with subsequent children and new partners. This must be challenged and addressed. The law does not protect individuals from stigmatizing, but it recognises the right to equality, and places the duty on public sectors such as social care and local authorities to provide equality policies and

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<sup>24</sup> Devine (2017), p.1.

training to its employees.<sup>25</sup> Birth mothers' rights may differ to that of prospective adopters but equality demands that those rights are recognised and respected. Better training and focus on professional ethics and practice is required, along with a greater empathy with clients' needs, and recognition of their individual strengths. The researcher knows from personal experience the struggle to fight against stigmatizing. It often originates from the generalisation of individuals, and of the assumption that people who have identical difficulties and crises are all the same and thus they are pre-judged on the basis of others from the same group. The lack of measures to challenge conduct which amounts to bias and discrimination is inappropriate. Such unfairness has thrived beyond accountability for some time, without challenge, and for the most part ignored, leading it to become acceptable conduct entrenched in adoption practice. Research carried out into child protection practice by Devine argues that 'there is the need for a better balance between individual rights and state power aligned with the balance that was intended when the Children Act 1989 came into force'.<sup>26</sup> Where the rights of parents are denied during the early child protection interventions there is the establishment of an incremental pattern in which adoption has become another process in the public child law system where individuals are vulnerable to being deprived of their rights not only under the statute, but also of their human rights.

Devine argues that in public child law the balance of state power and the rights of the individual is weighted in favour of the state. This applies both to the state's

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<sup>25</sup> Equality and Human Rights Commission, *Your rights to equality from public and community sector organisations*, Equality Act 2010 Guidance for service users Vol. 7 of 7, (April 2014).

<sup>26</sup> Devine (2015).

powers under the CA 1989 and the ACA 2002. She argues further that the intention of the legislation was to create a regulatory framework to solve or avoid problems that would occur without the statute.<sup>27</sup> The overreaching aims of the ACA provisions designed for birth parents were to address the need for balance in child welfare decisions, because it was evident that paramountcy of the child's welfare risked compromising proportionality, particularly where contested adoption was concerned. The birth parents' art 6 and art 8 rights were primarily a cause for concern.<sup>28</sup> The policy drift<sup>29</sup> away from the intentions in the statute must therefore be addressed to restore the balance between the power of the state and the protection of parental rights.

In addition to the weaknesses in the operation of the primary law, there is significant disadvantage to birth mothers in the lack of mandatory requirements in the subordinate legislation. A stricter observance of the Adoption Regulations and the NMS is crucial when adoption is part of a child's care plan, at the very least the local authority should be compelled to ensure birth mothers are kept informed about their child's adoption plan provided it is in the child's interests to do so.<sup>30</sup> This involvement must include formal notification of the plan to adopt, because only with the knowledge of this can they seek legal advice. A transparent and fair process is imperative if birth mothers' human rights are to be protected. If consent to adoption is being sought, then before it is given, the consequences must be explicitly explained to birth mothers and witnessed, preferably in the event of her having sought legal advice. The law in the ACA and the Regulations

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<sup>27</sup> Devine (2017). p. 168.

<sup>28</sup> Choudhry (2003) p.120.

<sup>29</sup> Devine (2017) argues that this has occurred with the CA 1989 but this drift is also evident with the ACA.

<sup>30</sup> As per Lord Justice McFarlane (2017), p.21.

are clear in their requirements for consent. If the person seeking consent cannot be certain and free of doubt that the signatory is giving consent 'unconditionally and with full understanding of what is involved' then it should not be accepted. It is probable that this can only be completely unambiguous where there are at least two officials physically involved in obtaining consent as per the requirement of the law.<sup>31</sup> It is not appropriate for any person to say at the point of obtaining consent 'if you do not sign the courts will override it anyway'. This is not what the law could have intended. Adoption may be inevitable, but birth mothers still retain the right to contest it in court. It is also important that separate statistics are kept of the number of birth parents who consent to adoption, and these are made available, to allow for further research to be carried out into the practice of obtaining and giving consent to placement and adoption.

The law should provide beyond merely discretionary measures that birth mothers have the right to create something for their child that provides information about their former life provided it is in the child's best interests. A great deal more sensitivity and support should be provided where the Life Story Book and post adoption contact is concerned. If necessary, support should be offered to assist with this,<sup>32</sup> with the appreciation that children should always have access to accurate information about their past. The same importance applies to letterbox contact. The current system which encourages adopters to engage in the exchange of letters but then fails to monitor, facilitate or assist is inappropriate to

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<sup>31</sup> Consent must be signed and witnessed by someone other than the person obtaining the consent. 'Consent to Adoption'  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/687605/a104-eng.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/687605/a104-eng.pdf).

<sup>32</sup> For example, from a family support worker or local authority approved volunteer service.

such a crucial provision. In a time where open adoption is strongly evidenced as a benefit to many children, a more robust process is required that compels parties to maintain contact. If an agreement for contact cannot be honoured for good reason, then birth mothers should always be notified. It is simply unacceptable for women to remain uninformed when letters are of such profound importance to their wellbeing. These improvements to adoption practice would require what Martha Fineman terms as 'a substantial reorientation of political culture, as well as adjustments to legal theory'.<sup>33</sup> This seems unlikely when the political and legal position on adoption has evolved to place the child's welfare as paramount, with the rights of birth parents only existing and therefore surviving in relation to the child's interests. It is therefore crucial that academic research continues to provide a voice for those who are silenced in adoption. This to ensure that evidence of the defects in the system is exposed.

The narratives on adversarial court process were intertwined with complaints about 'forced adoption'. Research carried out from the 1990s to the current day raises concerns about the trauma suffered by birth parents in public child law proceedings. This thesis' findings replicate previous results. The Family Justice System may have evolved, but for many birth mothers the process has remained static. However, initiatives such as the FDAC<sup>34</sup> is one aspect of family justice which is improving outcomes for families both in and out of court, but there is a long way to go. Funding for the continuation of the FDAC continues to be

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<sup>33</sup> Fineman (2008) p.9.

<sup>34</sup> Based on the principles of therapeutic jurisprudence or 'problem solving judges' the judge works personally with the parent rather than through counsels for the parties. Harwin, J, Alrouh, B, Ryan, M, Tunnard, J., Community Care: Embedding family drug and alcohol courts into family justice, (3 July 2014), <https://goo.gl/mShH4o> (Accessed 14 Nov 2017).



uncertain and currently only parents with drug/alcohol problems are referred. A FDAC judge has stated that the model can and should be extended to families where addiction is not the primary cause of child protection interventions.<sup>35</sup> She believes that the success of the FDAC in helping parents overcome their problems and care for their children is partly down to the direct interaction with the judge, or as she put it 'I go beyond the barrier'. This is a compelling ideal which speaks not only of moving beyond the physical barrier of the bench, but of the psychological barrier between parents and judges that has long existed in the adversarial courts. Research has already evidenced the success of the FDAC in keeping families together.<sup>36</sup> This existing knowledge could be enhanced with further research into the FDAC model which seeks to understand the crucial elements that motivate parents to overcome the problems which can lead to child care proceedings and eventual adoption.

It is imperative that money is invested in increasing independent, post adoption support for birth mothers, especially where there is a known risk of suicide. Offers of counselling should not be tokenistic but must be proactive in teaching women to understand the benefits of therapy in helping them to move forward with their lives. Counsellors should be trained to work with and support birth mothers with suicidal thoughts and attempts. They should have specialist knowledge of the unique form of grief suffered by mothers when a child is still alive but has gone.

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<sup>35</sup> Interview with FDAC judge 3 Jan 2018.

<sup>36</sup> For an excellent evaluation of the FDAC see Harwin, J, Ryan, M., et al., (2011) The Family Drug Alcohol Court (FDAC) Evaluation Project Final Report. Brunel University.

The FDAC and Pause<sup>37</sup> provide 'intense support'. These provisions should not be exclusive to parents in care proceedings; they should be available to all parents who have travelled through the family court system. In the aftermath of adoption proceedings birth mothers felt 'worthless', 'like a piece of rubbish', and I would argue this is partly because they are unsupported and disregarded once their children have been adopted. Investment into birth mothers' care following adoption can mitigate the risk of further interventions with subsequent children.

The need for independent support during court proceedings is long overdue. The support should be separate from and different to any litigation friend or Makenzie friend. Often it is human and not additional legal support which is needed. The FDAC use 'parent mentors' to support parents. These are individuals who have themselves experienced addiction and child care proceedings. 'FDAC parent mentors provide a volunteer befriending service to parents throughout their involvement with the court'.<sup>38</sup> I would argue that a similar model could be introduced to support mothers during care and placement proceedings where empathic and non-judgmental support can make a significant difference to both the short and long-term wellbeing of birth mothers.

Birth mothers should have the opportunity to be involved in the adoption process as much as is feasible. Their views should be asked for and if it is possible to uphold any wishes they express, then this should be honoured. The rush to have

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<sup>37</sup> Pause works with women who have experienced, or are at risk of, repeat removals of children from their care. Through an intense programme of support, it aims to break this cycle and give women the opportunity to reflect, tackle destructive patterns of behaviour, and to develop new skills and responses that can help them create a more positive future. *Pause: Creating Space for Change* (2018), <http://www.pause.org.uk/aboutpause> (Accessed 28 Jan 2018)

<sup>38</sup> Maycock, J., FDAC parent mentors – a unique approach to supporting parents, *Family Law*, (21<sup>st</sup> August 2017), <https://goo.gl/q7hnbR> (Accessed 26 Jan 2018).

children adopted is likely to be a significant reason why birth mothers are excluded from the process. Therefore, as soon as adoption is planned for a child, they should be consulted. Important factors such as advising them if their children have moved in with adopters, if they are settling in, potential dates for contact and letterbox arrangements should be communicated directly to them. Birth mothers did not mind if plans were changed but they objected to not being told anything from the time their children's final care orders were made. This increased their levels of distress significantly. The few birth mothers who were involved and informed coped far better with the process.

We have seen that a closed process, particularly with post adoption contact, increases the risk of unauthorised contact between birth mothers and adopted children. This is an important area for further research because currently the reality that adopted children are seeking their birth parents is not being adequately addressed. Further research should also be carried out into the lack of support in respect of post adoption contact. Letters, usually written by adoptive parents, sometimes by the child when they reach a certain age, have a huge emotional impact on birth mothers. Letterbox is an ongoing process that should be maintained and supported, because in the long term it is likely to benefit all parties particularly where older adopted people may wish to find their birth families. The success of these future relationships may depend on an open and honest exchange of information between birth mothers and adoptive families.

Charlton's 'birth mother philosophy' was discussed previously in chapter six. It is reiterated here, because despite these ideals being almost two decades old, this research shows that these rights remain a theoretical ideal as opposed to a reality. It must be recognised that birth mothers continue to be parents even if

they are prevented from parenting their children, currently there is little evidence that this recognition exists within adoption services. They have the right to be well represented listened to and supported when there are legal conflicts to determine their child's future. This means that legal representation must be available in the event of consent or opposition to adoption, the consequences are severe and thus advocacy that does not submit to local authority power is crucial. Birth mothers have a role to play in their children's future and therefore openness should be mediated along a continuum. This includes being kept informed and having contact if this is in the child's best interests. Currently birth mothers are all too often 'shut out' of their children's lives early on in care proceedings. Children should have access to information about their birth family's life either directly or through a third party and birth mothers themselves should be given the opportunity to provide information. Support for birth must be provided independently from the statutory framework and involve counsellors with no access to the child protection records. This lessens the risk that birth mothers will be stigmatised and allows them the autonomy to disclose their own experiences. All support, whether before, during or after adoption should be designed to empower and help women make informed choices about their futures.<sup>39</sup> As Macfarlane LJ has suggested there are long term benefits to be found from 'focussing for a time on the parent rather than exclusively on protecting the child'.<sup>40</sup> It is hoped important messages such as this from senior judges will eventually filter down to practitioners who work with birth mothers and their children.

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<sup>39</sup> Charlton (1998), pp.28-29.

<sup>40</sup> Lord Justice Macfarlane (2017), p.11.

The 32 birth mothers in this research did not complain about unfair treatment and thus there was no accountability of the agencies involved with them. Despite the law providing rights and services for birth parents, these are clearly struggling alongside two fundamental realities of adoption: The first is the welfare of the child being paramount, this means that birth parents will always find their needs and rights subordinated, because the focus and the resources are placed on the child. The second is the political policy of encouraging and recruiting adopters. The idea of modern adoption may promote ongoing links between adopted children and their birth parents, but if we consider the ideology of recent governments and the relentless drive to find adopters, we see inconsistency; as Harris Short notes 'contact between child and birth family sits uneasily with the more traditional concept of adoption and it can deter adopters'.<sup>41</sup> After all, the essence of adoption has always been a clean break 'as if the birth parents have never been, a total and absolute transplant'.<sup>42</sup>

It is evident that adoption law has progressed with the passing of the ACA. The law recognises that birth mothers should have a sufficient level of protection of their rights and they should be entitled to services and aftercare. If it is in their children's interests, they should be allowed to remain significant to them. However, the courts attention to the welfare of the child and the wide administrative discretion of local authorities coupled with weak accountability has meant that adoption law and practice has created a legal microcosm of unfairness and poor practice which only affects marginalised members of society, who rarely have a voice to object to such treatment.

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<sup>41</sup> Harris-Short (2015), p.903.

<sup>42</sup> Ibid. p.905.

During the construction of this thesis, cases such as *B (A Child)*,<sup>43</sup> *Re B-S*<sup>44</sup> and *Re G*<sup>45</sup> came before the courts and attracted significant judicial criticism on the 'recurring inadequacy' of adoption practice, leading to extensive media attention. At the time I questioned whether the birth mothers in this research were the direct 'human result' of what the President of the Family Division called 'sloppy practice'.<sup>46</sup> Sir Munby was referring specifically to evidence presented in court by local authorities in support of adoption, but this, and the administrative practice, are explicable linked, one cannot exist without the other.

This thesis informs and reminds those who are involved with birth mothers and adoption about the necessity of treating them fairly whilst acknowledging their grief over the loss of their children. It may be that practitioners, like Lord Wilson, 'fail to appreciate that adoption is not just an arrangement for the upbringing of children'.<sup>47</sup> This ought to be addressed, with the acceptance that adoption, quoting Lord Wilson again, 'has the most profound personal, emotional, psychological and social consequences which affect the people involved, to a greater or lesser extent, every day of their lives'.<sup>48</sup>

At the time the ACA was passed, Nick Allen predicted that the 'real losers' in the reform of adoption law may be birth parents, who were all but invisible in the protracted debates and government manifestos, yet they are the people who experience first hand the full force of law. A decade later, this work demonstrates that Allen's prophecy has proven accurate. Looking ahead however, the social

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<sup>43</sup> *B (A Child) (Care Proceedings: Appeal)* [2013] UKSC.

<sup>44</sup> *Re B-S (Children) (Adoption: Leave to Oppose)* [2013] EWCA Civ 1146.

<sup>45</sup> *Re G (Care Proceedings: Welfare Evaluation)* [2013] EWCA Civ 965.

<sup>46</sup> As per Munby P in *Re B-S (Children)* [2013] EWCA Civ 1146.

<sup>47</sup> Lord Wilson (13 November 2014), pp.16-17.

<sup>48</sup> *Ibid.* p.18.

awareness raised by these recent cases, and the criticisms by the family courts means adoption practice will sharpen and therefore the experience of future birth mothers may begin to reflect the intention of the law. Only time will tell. It would be worthwhile to carry out the same research ten years into the future to discover if a new generation of birth mothers who experience the adoption system feel that they were treated fairly, and in accordance with the law.

## APPENDICES



Ms Lisamarie Deblasio  
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PL4 8AA  
Email [lisa.deblasio@plymouth.ac.uk](mailto:lisa.deblasio@plymouth.ac.uk)  
13th April 2015

My Ref : LMDPHD

Dear Sir or Madam

Re: request for information under the Freedom of Information Act 2000

I am writing to ask for the following information pursuant to the above Act:

Please can you provide the name(s) of the independent agency or charitable organisation which your local authority uses to provide **statutory adoption counselling/therapy services** to birth parents of children adopted from the care of the said local authority?

This request is being made for the purpose of academic research within the University of Plymouth.

With thanks  
Yours faithfully  
Lisamarie Deblasio  
Postgraduate researcher in law

Lisamarie Deblasio  
Plymouth University Law School  
Room 001-19 Portland Villas  
Drake Circus  
Plymouth  
PL4 8AA  
[lisa.deblasio@plymouth.ac.uk](mailto:lisa.deblasio@plymouth.ac.uk)

30<sup>th</sup> April 2015

Dear

My name is Lisamarie Deblasio, I am a post graduate researcher with the law school at Plymouth University. I am writing to ask you if you would be willing to make my study known to your former birth mother clients. I have ethical approval of which I have attached a copy for your information. Details of the studies aim are as follows:

This study is to learn more about the experiences of birth mothers whose children have been adopted since the Adoption and Children Act 2002 became law. The information will be collected directly from birth mothers who participate in the study. Once the information has been analysed it will be written up and disseminated in the form of a PhD thesis. The study has several objectives: the first is to uncover an element of adoption which has not been recently studied; that of birth mother's experiences. The second is to contribute the findings of the study to the field of adoption; in particular, evidence of the strengths and weaknesses of current law, policy and practice. The third is to help empower women who have been affected by adoption by giving them a voice in research. The fourth is to make recommendations in line with the findings that will seek to improve the way birth mothers are treated by our legal system and by those involved in adoption practice. Finally, the study invites birth mothers to speak out about what impact adoption has had upon them personally.

Participants' personal details will remain confidential. Data will be collected by the researcher; it will be stored safely. Individual participant research data, such as questionnaires will be anonymized and given a research code, known only to the researcher. A master list identifying participants to the research codes data will be held on a password protected computer accessed only by the researcher. Hard paper data will be stored in a locked cabinet, within locked office, accessed only by researcher. Electronic data will be stored on a password protected computer known only by researcher. The data will be retained for 3 years then will be disposed of securely. In collecting and using data the researcher must comply with the Data Protection Act. The Act is based on eight principles. Compliance with the principles will ensure information is collected and used fairly, stored safely and not disclosed to any person unlawfully. The principles are that data will be:

1. Obtained and processed fairly and lawfully
2. Obtained for a specified purpose and not processed in any manner incompatible with that purpose
3. Adequate, relevant and not excessive
4. Accurate and kept up to date
5. Not kept for longer than is necessary

6. Processed with due regard to data subject's rights
7. Kept safe from unauthorised access, accidental loss or damage
8. Not transferred to a country outside the European Economic Area, unless that country has equivalent levels of protection for personal data.

For more information on data protection see: <https://www.gov.uk/data-protection/the-data-protection-act>

All information which is collected during the course of the research will be kept strictly confidential, and any information about which leaves the university will have names and all personal details removed. Participants may withdraw from the study at any time. All the information and data collected, to date, will be destroyed and names removed from all the study files.

If I can be of further assistance or you require clarification of any points please get in touch with me.

Thank you

Kind regards

## Participant Information Sheet

### Study Title

A study of birth mothers whose children have been adopted under the Adoption and Children Act 2002

*I would like to invite you to take part in a research study. Before you decide whether to take part you need to understand why the research is being done and what it would involve for you. Please take time to read the following information carefully. Ask questions if anything you read is not clear or would like more information. Take time to decide whether you would like to take part.*

### What is the purpose of the study?

This study is to learn more about the experiences of birth mothers whose children have been adopted since the Adoption and Children Act 2002 became law. The information will be collected directly from birth mothers who participate in the study. Once the information has been analysed it will be written up and published in the form of a PhD thesis. The study has several objectives: the first is to learn more about birth mother's experiences during adoption proceedings. The second is to contribute the findings of the study to the field of adoption; in particular evidence of the weaknesses of current law, policy and practice. The third is to help empower women who have been affected by adoption by giving them a voice in research. The fourth is to make recommendations in line with the findings that will seek to improve the way birth mothers are treated by those involved in adoption practice. Finally, the study invites you, as a birth mother, to speak out about what impact adoption has had upon you personally. Answering some of the questions will probably be very difficult for you but you can be confident that your answers will not provoke any negative judgment or criticism of you. The study provides a safe and confidential forum for you to share your experiences and speak your mind.

### Why have I been invited?

You have been invited to take part in this study because you contacted the researcher in relation to an invitation via your adoption support service or an advertisement you had seen in the media. You will have confirmed at that stage that you are a birth mother whose child has been adopted and you would like more information about the study.

### Do I have to take part?

*The study asks for voluntary involvement of participants. It is up to you to decide. I will describe the study and go through the information sheet, which I will give to you. I will then ask you to sign a consent form to show you agreed to take part. You are free to withdraw at any time, without giving a reason.*

### What will happen to me if I take part?

- As a participant you will have the opportunity to provide your information in a format you are most comfortable with.
- You may complete a questionnaire either electronically or a printed version. You will be asked to return the questionnaire to the researcher once you are happy with your answers. You will then receive acknowledgement that your questionnaire has been received.

- Alternatively, you may share your experiences in your own words in writing or by an audio recording.
- You may wish to be interviewed either by telephone or by Skype. This will involve being called by the researcher at a pre-arranged time suited to you. The interview will be semi-structured, meaning there is a list of questions that you will be asked but you have the opportunity to talk about any adoption related issues that you feel are important. Interviews normally take about one hour. You are welcome to take breaks or choose not to answer certain questions.
- You will also be asked to sign a consent form which will also be sent to you. You will only be consenting to the use of the information you provide in the study.
- Any questions you have in relation to any aspect of the study can be asked at any point by contacting the researcher.
- The information you provide will be strictly confidential and identified by a number. Only the researcher and the research supervisors will have access to the data. Your name, address, age and other personal information will not be used.
- Once the data has been analysed and written up, the information you provided will be retained for the necessary length of time then destroyed under data protection law.

### **What are the possible disadvantages and risks of taking part?**

You may feel upset or distressed from recollecting unpleasant memories and emotions whilst you participate. The researcher is aware of this risk and is sensitive to your feelings. If you find you become distressed, please do not hesitate to contact the researcher who can provide you with information to access support services. It may help you to let someone close to you know that you are thinking of taking part in the study, so they can offer support if you need it.

### **What are the possible benefits of taking part?**

*I cannot promise the study will help you with your personal experience of adoption, but I hope that the information you provide will educate people of the need to provide much better care and support of birth mothers through the whole adoption process. I also hope that the information you provide will increase understanding and empathy toward birth mothers in the future.*

### **What if there is a problem?**

*If you have a concern about any aspect of this study, you should ask to speak to the researcher who will do their best to answer your questions.*

*If you remain unhappy and wish to complain formally you can do this through the University of Plymouth complaints procedure.*

### **Will my taking part in the study be kept confidential?**

- Your data will be collected by the researcher; it will be stored safely.
- Individual participant research data, such as questionnaires will be anonymous and given a research code, known only to the researcher.
- A master list identifying participants to the research codes data will be held on a password protected computer accessed only by the researcher.
- Hard paper data will be stored in a locked cabinet, within a locked office, accessed only by the researcher.

- Electronic data will be stored on a password protected computer known only by researcher.
- Only authorised persons such as researchers within the team, supervisors, and sponsors (and for monitoring the quality, regulatory authorities), will access to view identifiable data.
- The data will be retained for 3 years then will be disposed of securely.

In collecting and using data the researcher must comply with the Data Protection Act. The Act is based on eight principles. Compliance with the principles will ensure information is collected and used fairly, stored safely and not disclosed to any person unlawfully. The principles are that data will be:

1. Obtained and processed fairly and lawfully
2. Obtained for a specified purpose and not processed in any manner incompatible with that purpose
3. Adequate, relevant and not excessive
4. Accurate and kept up to date
5. Not kept for longer than is necessary
6. Processed with due regard to data subject's rights
7. Kept safe from unauthorised access, accidental loss or damage
8. Not transferred to a country outside the European Economic Area, unless that country has equivalent levels of protection for personal data.

For more information on data protection see: <https://www.gov.uk/data-protection/the-data-protection-act>

*All information which is collected about you during the course of the research will be kept strictly confidential, and any information about you which leaves the university will have your name and address removed so that you cannot be recognised.*

### **What will happen if I don't carry on with the study?**

*If you withdraw from the study all the information and data collected from you will be destroyed and you name removed from all of the study files.*

### **What will happen to the results of the research study?**

The results of the study will be written up and published. You can ask for information about the completed study. The researcher will provide a summary of the findings to you on request following publication.

### **Further information and contact details:**

Name and contact details of researcher:

Lisamarie Deblasio

Phone- 07835 455512

Email: [lisa.deblasio@plymouth.ac.uk](mailto:lisa.deblasio@plymouth.ac.uk)

### **Are you a birth/natural/biological mother of a child or children adopted since 2005?**

I am hoping you may be willing to participate in my adoption study which has been designed to give you an opportunity to express your views on adoption

My name is Lisamarie Deblasio and I am a post-graduate researcher in law with Plymouth University. I am also a birth mother and you can be confident that your participation will be treated with the utmost respect and empathy.

- What? This study is to learn more about the experiences of birth mothers whose children have been adopted since the Adoption and Children Act 2002 became law. The information will be collected directly from birth mothers who participate in the study. The study has several objectives: the first is to uncover an element of adoption which has not been recently studied; that of birth mother's experiences of the law. The second is to contribute the findings of the study to the field of adoption; in particular, evidence of the weaknesses of current law, policy and practice. The third is to help empower women who have been affected by adoption by giving them a voice in research. The fourth is to make recommendations in line with the findings that will seek to improve the way birth mothers are treated by our legal system and by those involved in adoption practice. Finally, the study invites birth mothers to speak out about what impact adoption has had upon them personally.
- Who? The study is open to all birth/natural/biological mothers of children who have been adopted since the Adoption and Children Act 2002 came in to force on 30<sup>th</sup> December 2005. If you are unsure whether adoption under this Act applied to your circumstances, please feel free to contact the researcher for clarification. If you were involved in adoption before 2005 please get in touch, the study aims to compare your experiences with more recent practice.
- Why? Participation benefits: I hope the information you provide will allow you to freely express your views and feelings about your experiences of adoption. The information you provide will not only give you a voice but will seek to educate people of the need to provide better care, empathy and support of birth mothers especially in court. Additionally, your experiences will demonstrate where there is a need for a change of culture in the way the law treats birth mothers in adoption proceedings.
- How? The study involves the completion of a questionnaire which will be sent to you either electronically or a paper copy. This can be completed in your own time. Some mothers have preferred not to fill out the questionnaire but have written in their own words about their experiences, one mother recorded her story. Others have taken part in interviews over the phone. The way you provide your information is entirely up to you. Responses will be anonymised and treated in strictest confidence.
- If you feel you would like to participate or would like further information, please contact the researcher Lisamarie Deblasio.
- You can request the participant information form which provides further details on the study.
- In writing to: Lisamarie Deblasio c/o Plymouth Law School, Room 001, 19 Portland Villas, Plymouth University, Drake Circus, Plymouth, PL4 8AA.
- By text or phone to Lisa on 07835 455512
- By email at [lisa.deblasio@plymouth.ac.uk](mailto:lisa.deblasio@plymouth.ac.uk)
- By contacting me on Twitter <https://twitter.com/lisa190870>
- Any contact you make with me will be treated in the strictest confidence.

#### RESEARCH ETHICS: CONSENT FORM

Full Title of Project: Research study of birth mother's experiences of adoption.

Name, position and contact address of researcher: Lisamarie Deblasio LLB (Hons), post graduate researcher. Plymouth University Law School, 19 Portland Villas, Drake Circus, Plymouth, PL4 8AA

Email: [lisa.deblasio@plymouth.ac.uk](mailto:lisa.deblasio@plymouth.ac.uk)

Tel: 07835 455512

1. I confirm that I have read and understand the information sheet for the above study and I have had the opportunity to ask questions.

**Please Initial Box**

☐

2. I understand that my participation is voluntary and that I am free to withdraw at any time, without giving a reason.

**Please Initial Box**

☐

3. I agree to take part in the above study.

**Please Initial Box**

☐

4. I agree to the use of anonymised quotes in publications.

**Please Initial Box**

☐

-----  
-----

Name of Participant

-----  
-----

Date

-----  
-----

Signature

-----  
-----

Name of Researcher

-----  
-----

Date

-----  
-----

Signature

**Questionnaire Strictly Confidential**

Research number-----



Please leave any questions blank if you feel unable to answer them. Your responses will be treated with utmost confidence, respect and sensitivity.

## Section A

*This section asks you for information about your children*

1. Do you have a child or children who have been adopted because of a court order applied for by a Children's Services Department of your local authority?  
Yes    No
2. If you answered yes, how many children do you have who have been adopted in this way?
  - a) 1
  - b) 2
  - c) 3
  - d) 4 or more
3. If you have more than one adopted child, could you say whether the children were adopted:
  - a) In the same time period with the same court proceedings
  - b) At different times in different court proceedings

Please provide the year of birth of each child

  - a) child 1-----
  - b) child 2----
  - c) child 3---
  - d) child 4----
  - e) additional children-----
4. When approximately (what year) was each child adopted (when an adoption order was made by a court?)
  - a) child 1-----
  - b) child 2----
  - c) child 3---
  - d) child 4----
  - e) additional children-----
5. Was your child/children '*looked after*' in compulsory local authority care prior to the adoption?  
Yes    No
6. At the time Children's Services planned adoption for your child/children were you living in any of the following (if you lived in different situations with each child who was adopted please circle all that apply)
  - a) with your child's father or a different partner
  - b) with your parents
  - c) with other relatives

- d) independently
- e) in residential or assessment accommodation provided by a local authority
- f) were you homeless
- g) in prison
- h) in hospital
- i) in a mental health unit or psychiatric hospital

7. If you were in a mental health unit or psychiatric hospital were you there
- (a) Voluntary
  - (b) sectioned under the Mental Health Act
  - (c) I am not sure?

## Section B

*This section asks you about life events or personal problems which led to the adoption of your child/children.*

1. Were any of the following something which affected you personally when plans were made to place your child/children for adoption? (circle all that apply)
- a) mental illness
  - b) physical illness
  - c) disability or special needs
  - d) drug or alcohol dependency
  - e) domestic violence
  - f) parental control problems
  - g) homelessness
  - h) bereavement
  - i) any other factor (please specify) -----  
-----
2. Were you offered support or help by any other professional agency such as your GP or mental health team at this time? To find out if other agencies are working with LA to help families try and avoid adoption  
Yes    No
3. If you answered yes to Q 2 and 3 who offered you help and support? -----  
-----

## Section C

*This section asks you about your experiences of the placement for adoption proceedings.*

1. Were you given notice of Children's Services plans to place your child/children for adoption
- a) by telephone
  - a) by letter to you
  - b) via your solicitor
  - c) talking to you about it personally

d) other (please specify) -----

2. Did you have a solicitor at this point?
3. If yes did you seek legal advice immediately?  
Yes    No
4. If you did not have a solicitor at that time did you find one willing to represent you in court?  
Yes    No
5. Were you legally represented by a solicitor or barrister through the whole of the court proceedings?  
Yes    No    Not sure
6. Did a social worker from Children's Services or any other person from the local authority contact you or speak to you personally about plans for your child/children during court proceedings?  
Yes    No
7. If yes did you find the communication helpful?  
Yes    No
8. Were you able to attend the court proceedings in person?  
Yes    No
9. If you answered no could you say briefly why you were not able to attend court proceedings? -----  
-----  
-----
10. If you attended court to what degree did you understand what was happening during the legal process of the placement for adoption? I understood everything that happened
11. Did anyone explain to you what was happening during proceedings?  
Yes    No
12. If yes who explained things to you? (circle all who apply)
  - a) your solicitor
  - b) another solicitor involved in the proceedings
  - c) the children's guardian
  - d) any other court employee
  - e) a person from Children's Services such as a social worker
  - f) a voluntary worker such as an independent advocate
  - g) any other person (please specify) -----
13. Were you helped to make sense of any reports which were given to you during proceedings?

14. Were you made aware of any rights you had to challenge the adoption of your child/children during the adoption?  
Yes    No    Not sure
15. Did you give written consent to the placement for adoption/adoption?  
Yes    No    Not sure
16. If yes do you feel that your consent to placement/adoption was informed and given freely?  
Yes    No    Not sure
17. If you answered no to Q19 was your consent to placement/adoption dispensed with by the court?  
Yes    No    Not sure
18. When the judge made the final adoption order was there an agreement for any kind of contact between you and your child/children?  
Yes    No    Not sure
19. If yes please would you explain briefly what the contact agreement was for (example did you make an application for contact, was it formally included in a court order or was it to be an informal arrangement between you and the Children's Services department)?  
-----
20. Did you attend a 'goodbye meeting' with your child/children?
21. Did you have the opportunity to make a 'life story book' for your child/children?

## Section D

*This section asks you about help and support you received before, during and after the adoption of your child/children*

1. Were you offered any form of counselling or therapy by your local authority at any stage of the placement or adoption?  
Yes    No
2. If yes at what stage of the adoption was the offer of counselling or therapy made to you? (circle all that apply)
  - a) Before
  - b) During
  - c) After
3. If you chose not to accept counselling or therapy could you briefly explain why?  
-----
4. If you accepted counselling or therapy how helpful did you find it?

5. Whilst the adoption was proceedings were ongoing were you assigned a social worker?

Yes No

6. If yes was it a social worker who was not involved with the adoption of your child/children?

7. Were you supported by anyone else during the adoption proceedings (such as your GP, Community Mental Health team, a voluntary service or outreach worker)?

Yes No

8. If yes please could you say who supported you? -----

## Section E

*This section asks for some information about your experiences following the adoption of your child/children*

1. Since your child was adopted have you received any updates on their progress from a social worker, the local authority or anyone else?

Yes No

2. Have you had the level of contact with your child/children that you expected to receive if an agreement for contact was made in or out of court?

3. If yes is the contact:

- (a) annual letterbox about your child or from your child via a local authority letterbox scheme
- (b) telephone, email or skype
- (c) face to face
- (d) other (please specify) -----

4. If no to Q3 have you been told why contact has not happened

Yes No

5. Could you define how you feel about any contact you are having with your child/children?

6. Do you feel that there is stigma and/or discrimination toward birth mothers whose children have been adopted from care?

7. Are you aware of any support groups specifically for birth mothers in your situation?

Yes No not sure

8. Have you been able to talk to anyone about your experience with adoption

9. Looking back do you feel that you were listened to and played a part in the process of your child's/children's adoption?
10. Is there anything that you feel very strongly could have been done better to help you at any stage during the adoption of your child/children -----  
-----
11. At the time of the adoption was it made fully clear to you what the legal consequences were and that you would lose your parental responsibility

## **Section F**

*It would be helpful if you could give some information about yourself to help put your answers into context. These answers will be treated in strictest confidence.*

1. Your name (optional) -----
2. Your age -----
3. Current town and county of residence -----
4. Are you employed at present?  
Yes    No
5. If yes what is your occupation? -----

## **Section G**

This section is for you to provide any other information which you feel is important to share. Please continue on another sheet of paper if needed.

### **Permission to provide some more information to the questions**

If you would be willing to participate further with information about some of your answers, please sign here:

I am willing to provide further information to some of my answers and agree to being sent a short questionnaire at a later date: Signed ----- Date -----  
-----

*Your cooperation is greatly appreciated, and your replies will be kept strictly confidential and anonymous.*

## **QUESTIONS FOR SEMI STRUCTURED INTERVIEW**

### **Information about children**

Could you tell me how many adopted children you have when they were born and what age they were adopted at

Was your child in care 'looked after' prior to the adoption?

What was your living situation at the time adoption was planned for your child?

### **Life events leading to adoption**

Can you tell me what was affecting your life personally in the period which led to adoption-?

Did the LA offer you help and support?

Did any other agency offer you help and support?

### **Court Proceedings and consent to adoption**

When and how were you told of the LA plans to place your child for adoption

Did you have a solicitor when this happened?

If not did you seek legal advice and can you tell me about the legal advice you were given

Did you attend court proceedings- if so can you tell me about the experience?

Did you understand what was happening during proceedings?

Was everything explained to you and by who (for example reports)?

Were you kept up-to-date about the progress of your child's adoption

Were you supported by anyone in court?

Were you told about rights you had to challenge placement for adoption

At the time of the adoption was it made fully clear to you what the legal consequences were and that you would lose your parental responsibility

Did you give written consent to the adoption?

Do you feel personally that consent you gave was informed and given freely?

When the adoption order was made was there an agreement either legal or non-legal for any form of contact with your child

Could you tell me about that agreement?

Did you attend a goodbye meeting with your child?

Did you make a life story book or were you offered the chance?

Do you feel that the process included a consideration of your wishes and feelings concerning the adoption of your children?

### **Help and support before/during/after adoption**

Can you tell me about any counselling you were offered or had?

During the adoption process did you have your own SW?

Did anyone else support or help you?

**Experiences following the adoption**

Thinking about any agreement for contact have you had the expected levels of contact with your child?

How do you feel about the contact you have received?

Do you feel that there is stigma/discrimination towards women whose children have been adopted?

Are you aware of any support available for birth mothers?

Have you been able to talk about your experiences and feelings about adoption?

Looking back do you feel that you were listened to and played a part in the process of your child's adoption?

Could you tell me how you feel now about the adoption?

Is there anything that you feel very strongly could have been done better to help you at any stage during the adoption of your child/children



## **Reflexive Journal**

### **April 2015**

I sent my ethics application to Jason including my birth mum disclosure, I'm risking a lot, but I had no choice, if I want to research birth mums I have to tell the truth. Once they know they might see things differently. First, what about the risk I will be biased. Second, I'm not a proper researcher if I am a birth mums. But actually, J was supportive of application, so it's now gone to ethics.

My ethics came back. The panel said yes. They approved my proposal. This could be real, if they said yes it means my research has promise. They didn't judge me, I could tell them the truth and they haven't held it against me. It feels strange to have come a little way out of the closet but at least I know I can go back in any time because they won't tell anyone. I've mentioned to a few people who have asked me about my research that 'I have personal experience' but I leave it there. I wish sometimes I could just be open about it but it's like a divide between me now and me then.

My motives for this research: the theory does not match the practice in my experience. I want to know if my experience was an isolated one or if other birth mothers have had similar experiences. The only way to find out is to ask birth mums. The theory on adoption law does not answer my questions. Some people I have spoken to have said things such as 'well these women deserved to lose their children', 'they don't deserve to be researched'. But people who commit terrible crimes are researched so why not birth mothers? I feel guilty, like I am a sympathizer and I have to justify why I am researching such an underserving group. This already shows the amount of stigmatizing and stereotyping that exists.

Worked on the questions for birth mums, trying to avoid leading questions. It's very difficult. 4 people have agreed to review my questionnaire for a pilot study

I emailed BAAF to ask if they would advertise my study in any publications which may be read by birth mothers. Spent this week emailing, calling, asking people to run my study ad. Spoke to John Clifton who gave me some leads for birth parents. Spoke to birth mums group leader Vicky who knows some birth mums she will put me in touch with. Kate, a social worker from a birth mums group called me. When I told her I was a birth mum she was really supportive of my study and promised to tell her birth mums about it.

I used method inspired by John Clifton. I made FOI requests to every local authority in England and Wales asking them to provide me with the name of the statutory birth

parents counselling services they provide as part of the adoption process. Once these began to come back to me I contacted each counselling service (note that some did not have a service and some used 'in house -their own social workers this in itself is a finding because counselling is supposed to be independent). I contacted the counselling services to ask if they would make birth mothers who have previously had counselling aware of my study and sent them an information sheet and ethics approval letter. Lots of LAs use Adoption Plus. I emailed Adoption plus. Cumbria use Affected by Adoption I emailed them. Barnsley use PAC UK counsellor Mike Hancock offered to help, gave me some good insight and permission to quote. Barking use Barnados. After adoption worker Phil Batt emailed and agreed to advertise my study.

Barnet CC, Jenny C from the adoption team asked me about my study, promised to help but never followed up. Cornwall CC, Alison W asked me for more details about my study, said she was interested but never followed up. Family Rights Group are running my advert on their discussion board 'Is your child going to be adopted'. Northumberland Hilda F adoption team manager offered to help but no follow up.

I cannot work out why I am emailing counselling services and not adoption teams or any LA Children's service, but adoption team managers are contacting me.

## **May**

Movement for Adoption Apology Founder Veronica Smith emailed me to ask me if I was going to write about birth mothers from 1950-1980. She saw my article in the Plymouth Law Review.

I ran the pilot study with 3 mothers from the Action for Children Service and got feedback on the questionnaire from a parent counsellor from Action for Children. Pilot study questionnaires reveal comparisons in experiences, some leading questions need to be altered, I am wondering if the questionnaire is too quantitative because the answers are not detailed enough.

Study ad placed on Justice for Families page. All the emails have gone to the counselling services plus ad is being published on several parent forums online. I can't do anymore now except wait. The lady from Milton Keynes, the birth mums group, never called back. I don't understand, what did I do? We agreed on so much, she was really enthusiastic about my research.

I met my friend for coffee, she said she was proud of me for doing the research. This friend used to be my counsellor who I had for very late post adoption counselling (10 years after adoption). She gave me the info I requested. Then she told me because she

works for the service who hold the contract with Plymouth LA she wouldn't be able to see me anymore. I lost a good friend. Someone who really helped me and who I like and value. I've lost her because of my research, why could she not be my friend, just because I am looking for birth mums? She doesn't want to be connected to me in case it comes back on her counselling agency. But she was always so truthful about her unhappiness with services for birth parents.

## **June**

I have had email enquiries by BM's who are worried about anonymity and have issues with trust. I realise I may need to tell birth mums my position as a researcher and BM because trust is such a problem. I had a phone appointment with SW (birth-mother's group London area). Emailed question sheets to her, she has at least four mums willing to participate.

I presented my study design at Colloquium, Mast House, I won the prize for best research design, I can't understand why. I was terribly nervous. Everyone else seemed so self-assured and I was all over the place. I talked about the viscous circle of stigma.

I had a meeting with Plymouth birth parent counsellor about birth mums, she thinks LAs are defensive about helping me with my study. She had a meeting with Alison W adoption manager at Plymouth who was concerned about my study, told her that she would have to get legal advice before passing on details of my study to BMs. The same is with counselling services. Although 'independent' they rely on LA for business and thus do not want to make my study known unless permissions granted by LA. The defensiveness she says is down to my questionnaire being focused on the need for support and they probably do not want to see this given so little support is offered. I asked is there anything wrong with questionnaire? She says no, it is sensitive and fair and objective as is info sheet. This is so unfair, why are they slamming doors in my face? I already feel that my own experiences were not so unusual if gatekeepers are trying to prevent me from accessing birth mums. Feel very worried and frustrated about this. How am I going to find enough birth mums?

Two more mums come forward via email they do not want to fill questionnaire but want to send me their stories. A few days later their attachments arrived. One has done 20 pages the other 4 pages. The 20 page one I have sifted through and can only find 2 real answers to my questions, there is a huge amount of 'name and shame' of social workers etc. The other one is full of good answers about court and contact.

Phone call with Laura Monk doing a PhD into women separated from their children at Coventry (social work). She gave me advice and lots of names of people who may help plus will run my ad in her Match Mothers ezine. Laura is having the same problems with defensiveness from LA's and she has had to seek participants by other means such as her ezine and online forums. She said a SW who attended her focus group was 'hostile and made allegations that she was against SW's'.

An email from a BM who attends a group 'I attend a support group and we would all like to take part in your study, but we are gagged by courts we cannot speak'. I reassured her that all participants are anonymous. She said, 'but if LA find out we will probably lose our letterbox and probably have our names taken off files so when our child is 18 we won't see them'. I think of the vicious circle of stigma theory. Asked Jason about 'gagging' he suggests the gagging is not in a legal context but is oppressive nature of court proceedings and stigma.

I met with Siobhan Leigh Hunt from Brunel University. She is doing a master's in social work study of mother's long term experiences of care proceedings. We shared notes and ideas. I took part in her study in Plymouth uni library, it was very helpful to my understanding of research participation, but I felt awful, like I needed to justify myself. I needed her to believe me, please look at me now as I am not the person I am telling you about. I also thought I was over losing the children, but I haven't talked about it to a stranger for years and this interview showed me the grief runs deep. I emailed her a couple of times afterwards. She said I reminded her of a flower she once saw that grew on the railway lines. It was small and delicate but could withstand trains thundering past it without breaking. What a kind thing to say- I felt embarrassed and needy, like calling her, but I resisted the urge. From this experience I have learned a lot about how my participants may feel when they speak to me.

20 counselling services have replied to me directly, but I have also had enquiries from adoption team managers who I never contacted. I replied, giving a lot of information about my research. Some managers even went as far as arranging telephone calls with me to discuss my study. I duly waited for (an adoption team manager) 'Gill' to call. The first time she failed to call I assumed she was caught up with some important issue but the second time she didn't call I started to wonder if there was a problem with my method of inquiry. When more managers made initial contact then simply failed to follow up I took it personally (and negatively). Even though I had not disclosed my insider status to any of these people, maybe my 'real identity' is so transparent that professionals see through me, I am not a post-graduate researcher, I am a sad birth mother looking for evidence

that my experiences were not unique. I was an imposter in a world of respected professionals, a spy, did they perceive that in my communication? Why are you ignoring me? This brings back personal memories and feelings, I have built up my self esteem for so long I almost forgot what it feels like to have none until this happened.

Three questionnaires came today. I can't open them, and I don't really want to read them. I am reminding myself that this insider knowledge and the prejudices I developed during my own experiences must always be put to one side or kept separate. The stories are painful to read. I feel guilty, it feels wrong to have them in my possession. I feel as though by reading them I am a voyeur to these women's secrets. I know they have sent me this information willingly, but I feel responsible for their stories. The information has been sent to me on the assumption that I will take care with it, not misuse it. It's not data to them, it's their lives. Ethical responsibility is not just a paragraph in the post grad handbook anymore.

I spent the weekend reading their accounts of adoption. I am worried that I am opening up their old wounds. Some have said they don't want to fill out the questionnaire, K said it's too impersonal; they want to tell me what happened. Last night I followed up a questionnaire with a phone interview, BM answered my questions, but she sounded empty and emotionless. She told me her partner had hurt her child. I really related to her emptiness, that feeling of being dead inside, or frozen. I'm angry at myself because I can't do anything to change her situation. Is that what I thought when I started this, that I could become super-women and solve their problems? I have to stop myself from saying 'come down, let's have a coffee and'....what? Let me take away your pain? Your supposed to ask them questions not be their counsellor.

Searching: I never realised. Some of them searched after their children left. I found the literature on searching, it's what the bereaved sometimes do. I realise that's what I did, that demented walking and driving for all those months, I was searching for them and I didn't know it at the time. A psychological symptom of grief.

I have done my first proper batch of interviews, getting the consent forms signed and returned has been a nightmare. My inexperience shines through. So important to record them because I can't take notes and properly listen and the emphasis with phone interviewing is on listening as there are no other indicators such as eye contact, hand gestures, body language. They seem to be more like chats, how am I going to transcribe to analyse in line with my law questions.

What if my feelings are contaminating my interpretations of their stories. If S isn't angry about the way she was denied the right to get a new solicitor, then it isn't inappropriate

for me to feel angry on her behalf? but I have, and I do. The same with grief, what if I am finding it harder to separate their sadness and regret from my own. What if the findings are tainted with my own anger and sadness, will that invalidate the whole thing? Yes, it will because it will be biased- on the other hand- if I detach myself completely I may as well not bother.

There's so much the books don't tell you. I interviewed J yesterday, she didn't even realise her son had been adopted until 2 years later. I took pages of notes because she didn't want to be recorded, after the interview the transcript was just a mess of words with me trying to get it clear in my head, what if I missed something she said that was really important. I got up at 4am and copied the notes out neatly. I felt back in control, but then S sent a text asking me about my study. I emailed her the information sheet. She replied, 'what's the point of this, it won't help me get my kids back'. She has a point, I am starting to wonder if there is any point in doing this when it only seems to cause stress to them and to me.

Data collection is so complicated. Some participants don't like the questions, but they are willing to tell me their stories. The MAA are dithering because I think they wanted me to do something that is not law based, something about M and B homes. I explained about consent and capacity being within the realms of a legal study not sure she understood me. Several long accounts emailed to me, some short accounts, and a picture of a BM experiences in court (she cannot write or read very well). Some mums have emailed several times to tell me they are glad I am doing this research. N has no qualms about telling her story. M has kept it in for so long. Building trust is so important. Sometimes I have to call several times before they will tell me anything.

## **July**

I had a call from lady who wanted advice on appealing her child's adoption despite me telling her that I can't be involved. She said she was walking down Edgeware road in London, there was so much background noise and traffic. I tried to be tactful, but I felt out of my depth. I explained that ethically I was unable to advise her, and neither was I qualified to do so. She got angry at me and shouted down the phone at me that I was unethical by 'being ignorant and ignoring the truth'. I felt bad for her. I remember how we clutch at straws, ask anyone who may be able to help and experience a lot of doors being slammed in our faces.

Learned that a lot of birth mums will not participate for fear they will be discovered and their contact will be stopped. They are also stigmatized, so they don't think their opinions

count for anything. But if they would take part, that can be changed, not speaking makes the stigma worse. It's a vicious circle.

A birth mother called me for an interview. She was homeless, mentally ill, in a psychiatric hospital when her children were adopted, she didn't have a lawyer, what chance did she have.

Lots of birth mums got back to me but I had responses to study but not what I expected. A woman who is trying to find out whether her son was adopted while she was in hospital. He's 16 now and she only has a name of a social worker who came to see her. She asked me to help her make enquiries. I regretted that I couldn't, but I wondered if there was a way I could incorporate her story into the research.

I am surprised by the nature of some of the contact I am getting. A grandmother called me she wants me to help her try and get residence of her daughter's baby. She said on Monday her daughter is 'up before judge Dodds'. She told me he is well known for his dislike of birth parents in care proceedings. She said they have no chance of keeping the baby but if I wrote a letter for her. I explained I couldn't and she put the phone down on me. I felt for her and her daughter and her grandchild. I googled judge Dodds. He's being investigated by the judicial office for misconduct.

Some asking, will I help them make a complaint against the local authority. They have no one to help them. This may be something that can be researched in the future, help and support for birth parents who want to make a formal complaint- help with filling out the forms- I know how confusing this can be.

One of the books says adoption is an act of violence against women and children. I always thought it was, part of me still thinks it is, but I didn't expect to read it in a book. It is. The law books don't say this, it pure theory. Who is right? How can something be an act of violence and in children's welfare? It's like I know the answer, but I can't grasp it.

I did several interviews with a birth mums. They went ok, but what if it fails. It can't fail, it must succeed. I need help and advice. I keep reading but no writing is happening. I don't know how to put the interview into words. What have we got in common with older birth mums. Not much. They gave up their babies. We have ours taken. Only thing the same is the loss.

Received some questionnaires back. Nothing in them surprised me at all. I have a lot of emails about forced adoption, a large amount of data, but having read it carefully nothing

fits my line of questioning. I will email them back and ask if they will participate in an interview.

Adoption in the media again and again. I am concerned that I avoid reading about it because of the emotional reaction and I avoided going to an adoption conference because I couldn't stomach it. Avoidance is not going to get the research done. It also says something about my emotional relationship with adoption. If I can't objectify media and academic talks because it is triggering my own pain how can I objectify the data? All the opinions, the views are shouted out by people who really don't know the true impact of adoption. People who are really affected, mums, dads, kids hardly ever speak but they know best how it is.

A lot of birth mothers got in touch. There is not enough time to interview them all. I'm worried if I leave it too long they will lose interest. I did 8 in one day. This was completely exhausting and not feasible. I'm not experienced enough. I got confused about who I was talking to. I missed out some questions. Luckily most are happy for me to call back and clarify, but from now on only 4 a day. Reoccurring in the interviews: losing a child- forced adoption- no rights-adopted quickly-shut out- denied contact with children- domestic violence.

Brings it all back. I want to say to them it gets easier but does it? I know mine are OK. I've seen mine, they survived. I can't imagine how I would feel now if I had not had any contact or heard if they were OK, it's the not knowing that is worse. The feeling that your kids are out there somewhere without you. They try to put it into words. It's like you have a normal expression, you look normal, but underneath you are screaming, no one sees it but it's there just below the surface.

### **August**

I have been staying in touch with 3 birth mums. Is this ethical? Am going to speak to Jason. J says I need to get further ethical approval, which I have applied for. Received 2nd ethical approval.

G is having therapy. CBT and IPT. She says it is changing her life. All her life she has been abused by men and her own mother rejected her. She had her first toxic relationship aged 16. She has children, some adopted some living with ex-husband. She was diagnosed with a PD and bi polar. She ended up in a long term mental health unit. She had anorexia. Now she has therapy. We text most days and speak on a Sunday night. I tell her I am recording and taking notes. I care about G. I want her to succeed. She is also in further education. She has told me 'Lisa I learned it's OK to cry today- I cried for



2 hours. I let go of so much of the past'. 'I admitted in group therapy today that X and X were adopted'. 'I am learning to like myself and think before I speak'. 'I have started to cut the toxic people out of my life'. She is moving forward with her life but misses her kids so badly. Sometimes she doesn't know how to cope with the loss. I said 'it gets better, after a long time it becomes bearable. You never stop thinking about them, but the pain in your heart gets dull rather than sharp'.

N and I stay in touch by email. N had 2 children adopted. They were split up. Her son was placed 7 miles away from her home. She bumped into her son and adoptive mum in town centre cafe. N made a complaint to local authority about adopted child's placement. She had done stage 1 when we first met. A letter to adoption team. LA legal services told her to move away, N was very angry. She also says adopter puts public pictures of child on social media. She wasn't happy with stage 1 response which said they were unaware that N lived there, they thought she had moved. N has done stage 2 where an independent investigator looks at the complaint and does a report for the director of social services which either upholds or dismisses the complaint and makes recommendations. N is very angry, worried about bumping into son again and suspects adopter orchestrated the bumping in to each other. I give her support, 'keep calm when you deal with the LA' try to stay focused on the complaint so you get the answers you want'. She wants to know why they placed son so close to her home and a proper enquiry.

U and I have spoken several times. She has done a brilliant timeline of her adoption experience. Her adopted son aged 16 (who no longer lives with his adopters) has written to her and wants to see her. She took the letter to a solicitor who told her she has no legal action. No CA contact application possible because she has no PR. She applied to the courts for leave. Judge approved and gave her leave subject to counsel's opinion. Counsel were critical of LA for not reviewing the issue in the best interests of her son. U needed to have a mental health assessment instructed by the LA. U talked to me about her hope and fears. She hasn't seen her son since 2006. She talked about the MHA, how intrusive it was, but she would go through anything to see her son again. I'm really struck by U. She now works as a volunteer for the housing charity that helped her get rehoused. She is proactive and inspiring.

Interviews have similar themes. Confused, angry, helpless, powerless, the number of years makes little difference. Some ask, 'how was adoption for you' all I say is 'terrible'. So much of their experiences resonate with mine but I can't do anything to change theirs, just an outside observer.

I spoke to a SW today from Northampton. She asked me about my research. I was cagey with her even though she was really nice. I felt very protective of my study and my birth mums. She was very honest about the way families in need are not helped. She spoke about lack of funds, judging parents, how bad their case loads are. She said sometimes she doesn't go home to Peterborough but the LA pay for her to stay in a hotel and she takes the case files to work on overnight for court the next day. Sometimes she cries herself to sleep through the sheer amount of cases and the children she can't get time to see. I asked if she would let me interview her. She said, 'when I leave the LA'.

U texted me to say her MHA was successful. She was seeing her son later in the week. I am so happy for her, she deserves this after her hard work. I asked her to let me know how it goes but I wonder if I should be saying that. Turns out I need not have worried as U never called back and I knew I could never call her.

### **September**

I have a huge amount of data. It isn't well organised. Notes. Half transcribed interviews. Recordings. Letters. Emails. I thought it was under control but looking at it now I can't see anything clearly. How will I turn this into proper data to be analysed? Stuff is still arriving. I have made a point of contacting everyone who emails to ask if they want to be interviewed. Quite a few have been but there are some issues around the info they give and the things they say. I can split them roughly into 3 or 4 groups. There's the ones who want help. They call me to find out if I can: give them advice, help them appeal, write to authorities on their behalf. They are willing to participate but some still have court cases ongoing, so they can't take part. Even if they haven't got a court case ongoing I don't think it's ethical to let them take part because they have another motive, like a bargain they want to do- I take part in your study-you help me.

Then there are the ones on a crusade. One girl has emailed me 20 times. She has sent me her story in minute detail it goes on for pages and pages. I am avoiding calling her about an interview. Things that stand out: she has an injunction against her not to name her children on social media. She has a Facebook account where she posts videos of her giving speeches about judges, social workers and corruption. She said the judge in care proceedings told her he knew the social worker was corrupt. She has had 4 children removed and adopted. She has been in the papers dressed as superwoman outside the court and social services, an activist. She wants me to name her and her children in the study. There are other similar women contacting me. Some of them say Ian Josephs is getting them out of the UK to France with their other children, or John Hemming is taking on their case. I don't think it is ethical to interview them because they want me to crusade

on their behalf. They don't seem interested in the aims of the study, it is more about getting their cases known about, so taking part in this research is pointless because I won't name them. Also, one woman is advising other birth parents to name and shame social workers and post dedications to their adopted children on Facebook and Twitter. They are like a community- this is definitely a form of stigmatized group and would make interesting research.

A lady called MC won't say a lot about her own situation, but she knows I am a birth mum and she is relentlessly texting me for information about my own circumstances. 'what happened to you' 'why were your children adopted' 'tell me Lisa, if I know what happened to you it may help me' 'Lisa did you have PND' 'what treatment did you have' text after text. I felt I had to reply, to ignore would be rude and unprofessional. I texted that my situation was in the past and very different to hers. I gave a few things away, more than I wanted. I feel so uncomfortable, why did I open this up with her? She now won't stop texting day and night, and they are becoming desperate. Now I realise she is not just curious but is trying to get info off me that she may be able to use in an appeal against the adoption order. Spent 2 days wondering if I have a 'protection from harm' duty towards her. In the end I emailed the counsellor who put me in touch with MC. I briefly mentioned that I was concerned about MC and would it be possible for counsellor to just check in with her. She emailed back of course and said, 'did you know MC is trying to appeal the adoption'?

Today MC texted me. 'Lisa why did you go running to R, why have you breached my right to privacy, you are a bitch, I can't believe you did this, send me a copy of the email now'. I felt horrible, sick to my stomach and like I betrayed MC. I replied saying I'm very sorry that you feel this way. I have an ethical duty towards participants and I just wanted to ensure you were being cared for, I am really sorry if I offended you. I forwarded her the email I sent to the counsellor. Spend the rest of day reflecting on what I could have done differently, or better.

Me and G decided to stop contacting each other. It's for the best we both agreed. She has made such a lot of progress she needs to focus on the future. I promised to send her the link to my PhD if it ever gets published.

I have to stop emailing N, as she is getting needy, asking what I would do in her situation, whether I think she should get a solicitor, if I think her son would benefit from seeing her. I am finding it harder to be objective and am fielding her questions. I need to think of a decent and compassionate way of ending things. Feel bad for N. She still emails me attachments and updates from her complaint, but I don't reply. I wonder if even though

she agreed that she said she fully understood our ongoing research relationship, maybe I took it for granted that she carried on seeing it that way. I think N needed a friend and I could not be that. I feel like I have taken N for granted.

### **October**

To date U has never told me how her contact with her son went. She never got in touch again. I felt rejected which is ridiculous and unprofessional but then some of the literature on ongoing research relationships says its normal to experience feelings of rejection if a participant bales out. It just important to be open about those feelings.

### **November**

Sara's story has stayed with me. I have tried to find a way to include it in the analysis, but I think it won't be done justice. Her story is something that could be taken outside this thesis. Zoe has some ideas on controlling agencies. A lot of the data has become objective now- it sounds cold, but I think it is a natural research progression. But Sara's experience is very troubling, it speaks for a lot of things that are wrong with our system.

### **Jan 2017**

I have spent the last 2 months transcribing the raw data. I have managed to turn it in to something coherent. It is hugely powerful. I never really saw the patterns until now. Now I'm separate from the data I can see how emotionally involved I was with the women at the time of the interviews. Reflection is an amazing thing. I am so glad that I had the sense to leave the data alone while I wrote the method chapter. I never could have analysed objectively then but now I am confident that I can. That saying 'you can't see the wood for the trees' is so true and I couldn't before but now I see each piece of data as a separate element of a whole story.

CODING	TOTAL
Final number of participants Ages 24 -46	32
Number of local authorities involved in adoptions	24
Children Adopted between ages 7 months and 10 yrs.	56 34 girls 22 boys
Birth Mother White British Mixed ethnic Black British African White non-British Asian British Not given	20 7 1 1 1 2
BM in care/adopted	10
Homeless	3
Socio economic deprivation	27
REASONS FOR ADOPTION	
Crisis/Instability/Family problems	32
Previous involvement with CS	20
First involvement with CS	12
BM still have children at home	17
Understood why adoption occurred Did not understand	27 5
DV living with Reason for adoption	28 20
Emotional abuse	29
Child neglect	25
Loss of parental control /child behaviour	1
BM mental illness	12
Drug/alcohol BM	5
3rd party mental illness 3 <sup>rd</sup> party drug/alcohol	2 10
BM learning disability	1
BM physical disability	1

THEMES	TOTAL
Not caring for children adequately	21
Stigma	
1- did endure stig from professionals involved during and after adoption	24

2- stig caused them to deny the existence of their adopted children	15
3 -were misunderstood by society -were preoccupied with what others may think of them- feared label of 'child abuser'	5
4 -adoption stigma' identifiable stigma to that which many said they already lived under	16
Adoption stigma was only part they kept secret	22
Forced adoption	19
Vague recollection of court experiences	7
BM experiencing DV	28
BM in care as a child	8
BM adopted from care	2
Deprivation	27
Employed BM	3
BM state benefits	29
Times mentioned 'my failings'	20
Notification of adoption plan	25
Said LA aware of address	31-1 (moved)
Not informed	1
Correct formal notification	10
Informal notification/told in other ways	9
Consented to placement/adoption	6
Pressured to consent	4
Contested placement/adoption	20
Could not no capacity	1
Unsure if contested	7
Active apposing care orders	19
Represented/legal aid	32
Self rep at some stage	6
Appeal to HC	2
Understood why consent was dispensed with	16
No or little experience of being in court	14
Attempted to oppose adoption order	2
Contact after placement	2
LA focus only on stopping contact post placement	15
Contact stopped post-placement	17
Did not know when contact stopped	17
Challenged decision to stop contact	7
Not involved/not asked for W and F	26
BM support worker	0
No Goodbye meeting	6
Cancelled	3
No chance to make LSB	8
Refused to make LSB	3
Offered counselling	20
Never offered counselling	7
Refused	10
Received LA counselling	8
Other counselling	4

Offer of PA contact	29
No contact from start	3

## **Interview transcripts and written material- May-August 2015**

### Amy BM1

LD: Did you experience stigmatizing because of the adoption.

Amy: I was bullied, me and the dad were put under pressure to get sterilized by the guardian. Then later when I was going for contact with C, I was in this room with my solicitor, the guardian and the social worker, C's solicitor came in and shook everyone's hands. I held mine out, but she refused to shake it. Legal/Stigma from authority

LD: Were you given notice of Children's Services plans to place your child for adoption.

Amy: they told me, not in writing though, they told me C was going to be adopted while I was pregnant, about 30 weeks. I had 2 other kids adopted see, this was something they had meetings about before I even had a solicitor. Informal notification before baby was born

LD: can you explain what you mean by 'forced adoption'.

Amy: The social worker told me court would support adoption, so I may as well agree to consent, and this was months before they even did a permanence plan. Forced adoption

LD: Did you attend a 'goodbye meeting' with your child.

Amy: yeah but what a joke. I've been to them before, they have them in wacky warehouses, it was like the ultimate punishment. They aren't nothing to do with children's welfare they're for social workers who force goodbyes on families with fingers crossed that it's gonna be the last time you see your baby and the adoption lasts forever. Be a good girl and say bye to your kid...it's not real. It's their made-up world. So, guess what? two years later C's adoption broke down. I'm now in court again trying to see him, he lives with foster carers. Attended goodbye angry that they are not meant for families-adoption breakdown

LD: how did you find out the adoption had broken down.

Amy: I got suspicious because my letterbox contact stopped, and they wouldn't tell me why. At first, I wasn't overly bothered because I hated the idea of having to send false letters, you know what I mean; Dear C, mummy is doing well, we got a new puppy, it's been very cold lately. But I sensed something wasn't right and I found out 12 months later that he was back in care due to concerns about the adopter's care of him. I can't tell you how angry I was, I still am, so much time was allowed to pass while they sat on the truth and did nothing and all that time he was asking to see me, and I had no idea. It



doesn't matter if your PR is taken away if they leave the adopters then we, the mums, should always be told. Lbox contact stopped

### Antonella BM2

LD: Did you attend a 'goodbye meeting' with your children.

Antonella: X picked me up and she saw that I was really struggling, so instead of going straight there to the (...) she took me to the shopping centre and helped me pick out presents for them and she even paid, said she could claim it back. I got a little goal and football for C cause he's football mad, still is today, and a snow globe for C but not snow, it had glitter inside, that changed how I felt when I saw them, it was still painful, terrible sad for us all, but having presents for them was a distraction - X showed she cared, everyone thinks SW's haven't got feelings but X tried to make it better for us. Positive goodbye experience

LD: Looking back do you feel that you were listened to and played a part in the process of your children's adoption.

Antonella: yeas, it all changed for us when the first placement fell through and the foster mum and her partner adopted them, it was what I wanted all along, they were happy there, and I like X. The SW said to me 'how would you feel if X adopted C's'. I wrote a letter with a list of things that I knew the (children?) liked about being with X and apparently that list was used in the adoption application, I feel like I am part of their lives always because of that. Was involved played a part

LD: Have you had the level of contact with your children that you expected to receive.

Antonella: yes, more actually, it was going to be indirect to let the kids get settled but X knew me, we'd met a few times. She couldn't see no reason why I shouldn't see them once a year, I've seen them twice now- it's amazing- blows my mind how much they grow and change each time. We also send letters to each other. I write to her and the she writes back, and I had a little Christmas gift, just a candle, but it said, 'to mummy' it made me feel like my life was worth something'. Positive post adoption contact

### Becky BM3

LD: Can you tell me what was affecting your life personally in the period which led to adoption

Becky: I've been involved with social services for 15 years. I have a child in my care and that is thanks to support from 2 very good SW's, but before that I lost 2 children to

adoption and that was because I wasn't able to care for them because I have a bi-polar. If I'd been helped I could have cared for them, but I wasn't helped at all, they just came into my life and took them and got them adopted as soon as possible. It's a lucky dip, you can get a brilliant SW who fights for you to keep your kids and helps you, or you can get one who is against parents and wants them to fail, if you are unlucky you've got no chance. Personal problems-previous involvement – mental illness

LD: But the SW doesn't have the final say, the matter has to go to court. The judge makes the final decision.

Becky: Believe me they know all the tricks to get your kids adopted, they just elaborate on the basics, neglect, acting bizarre in front of your kids, no food in the house, they really do make stuff up it's not a myth. This is something that I want you to print, they do write lies, they write hearsay and assumptions, and old statements from the past are re-used. They say this 'might' happen in the future and that is grounds for adoption. It's like being found guilty of a crime you haven't committed but someone says you might one day. Unfair treatment

LD: Were you and your family offered support or help by your local authority Children's Services to overcome these problems.

Becky- yeah, I was initially, they came round and helped me get packed for moving, took the kids for respite one time when I was in hospital, but they just set me impossible targets. I wasn't strong enough or brave enough to get rid of X at the time, so the kids got taken permanently. Could not meet targets set to care for children

LD: Have you had the level of contact with your children that you expected to receive

Becky: no not really, I had 1 letter then it stopped, I rang the letterbox service and I was told I wasn't legally entitled to letterbox or an explanation as to why I hadn't had any reply to my letter. Not expected level of Lbox

LD: can you explain what you mean by 'forced adoption'.

Becky: As soon as the social worker said they wanted adoption we knew it was going to be forced through whatever we did. Forced adoption

#### Cassie BM4 written account

Cassie: there is always going to be stigma around adoption, it's easier to not say, no one round here knows I had another kid, obviously its cruel to deny your kid, it's like saying someone's died when they haven't. The problem for me is and this bothers me a lot of

the time, if I stay here now and say four years down the line when he turns 16, he comes and finds me, well I've got a job in my community centre, I help the kids from the estate make bracelets and bake, that kind of stuff. I've got respect round there, just say that one day C comes knocking and all the people who think I'm great, well they will know I lost a kid cause of neglect. He makes contact and the secret will be out. Social stigma

I consented to placement, it sounds bad but at the time I had no fight left after care proceedings and just wanted an end to it. Basically, social services promised regular letters and photos from the adoptive family if I consented, so they didn't have to go to court with me contesting it. Later on I was told by my solicitor that I should have had legal advice before I signed because they didn't put nothing in writing they could easily back down on the promise, I couldn't enforce it anyway even if they wrote it down. Bargains for consent to placement

LD clarified by email: can you remember who you gave consent to.

Cassie: it was a woman from the court, an officer, she had a badge and ID and stuff.  
Legal requirement for consent

#### Cece BM5

LD: Did you experience stigmatizing because of the adoption.

Cece: I've been stigmatized, it happens a lot in women's aid. Even women who do everything they are told to do, stay in the refuge, agree to an injunction against their bloke, move areas, all of it. Their social worker doesn't trust them they suspect us all the time, they say we are seeing our blokes in secret, telling lies, even when we are totally honest they think we are lying. It makes you feel like a child yourself because they hold all the power. If you stand up for your rights, you risk losing your kids. Legal/social stigma

LD: to what degree did you understand what was happening in court during the process of the placement for adoption

Cece: I understood it. I got more and more angry. I was treated like dirt, I've felt invisible a lot in my life but courts the worst. The judge looked through me. I had a folder of evidence supporting me caring for C's, a proper assessment, but the (...) wanted adoption, it didn't matter what I said. I could have been the best mum in the world, nothing was gonna change that, the adoption. My voice wasn't even heard, my solicitor did nothing at all, he didn't even speak up when they gave me the public slating, and he knew it was unfair. Answer me this, how can the system be fair when I can't have a voice in my own kid's adoption? Experiences of being in court

LD: Have you had the level of contact with your children that you expected to receive

Cece: I've had some- I'm really grateful to get that, but I can't write back. Had some letterbox

LD: can I ask why not

Cece: the SW told me not to write 'I miss you' or 'I love you' in my replies. Well if I can't say that I'm not their mum anymore. Not just that but if I send a letter what doesn't say I love you. I miss you, how's that gonna make them feel? They are gonna feel confused, they will think I don't love them, I told them every day since they were born that I love them, if I stop they will think, 'mummy doesn't love us' its better to say nothing, no risk they will get even more hurt, do you see what I mean? Cannot reply to letters

LD: Yes, Cece I do see

#### Claire BM6 written account

Claire: I don't deserve counselling, it might make me happy. I owe it to the kids not to be happy. I stay in the past. I'm stuck in the time that they were here. I sit in their room, it's been untouched for 6 years since they went. I stay in there for a few hours a day and sleep there at night, on the floor, so I don't disturb their beds. I think if I keep it like this they will come back. Refused counselling

#### Dani BM7

LD: Did the LA offer you help and support

Dani: No not from the start-and all I will say is they are evil- look I have my daughter and the court found no fault with my parenting but they wouldn't let it go- they are evil there are no other words. The process was terrible- like torture- I know I am biased but the system is awful and bad for kids I say it needs a big shake up. I was a happy, bubbly person before they came into my life, but they turned our world upside down. Now I cry at everything. I can't watch TV any more, anything to do with family. I am completely emotionally destroyed. You know the saddest part, they kept telling me not to let anyone walk over me or control me, yet that is exactly what they did. They take away any hope you have for a better future. Stigma? No help and support

LD: Did you attend a 'goodbye meeting' with your child.

Dani: no, the social worker said that hospital was an inappropriate setting for C's to visit. I questioned that cause there's a big family room with toys, it's set away from the ward.

It's where other children visit their parents, but they didn't even return my call, so I didn't get to say goodbye. No goodbye- cancelled

LD: Have you had the level of contact with your children that you expected to receive

Dani- I've had 4 letters so far. They are quite nice letters, make me feel good. She says in her letters she encourages him to talk about his birth mum, she doesn't deny me and his past. Decent letterbox experience

#### Emma BM8

LD: Did you experience stigmatizing because of the adoptions

Emma: It's shame *and* stigma for me. I think we are discriminated against by the social workers, the health visitor and people in Cafcass, even my solicitor looked down on me. I'm ashamed of failing my kids but there is good in me, I've proved that, but the good isn't recognised, it doesn't match what they wrote and said about me, so they ignore it. Legal stigma

LD: Did you have the opportunity to make a 'life story book' for your children.

Emma: yeah, I was asked to write a letter and put in some pictures, like a timeline of them since they was born, I had some gaps where we didn't take many photos but there was the holiday and their first day at school, it was good for me, I knew that the adopters were gonna go through the letter and the pictures with them so they would see that there were happy times. Life story info-happy that adopters would share info

LD: what was your experience of court like.

Emma: you feel alone. X was with me and he kept up with the blaming, like 'Emma, if you hadn't let them in we wouldn't be here. It was obvious to everyone in that waiting area he was bullying me, there's all these officials standing there and not one of them came over and said, 'oi leave her alone, she's got enough to deal with'. Literally no one is on your side in court. Alone in court

#### Fiona BM9 written account

Fiona: The twins were adopted in June of that year. I walked 20 miles a day I reckon, trying to find them, from one part of the city to the other. Every day for 3 months I walked around looking for them. I wore out shoes, flip flops. I had terrible blisters. I was sunburnt, but I walked and walked. I used to get 'leads' like where I thought I had seen them being pushed in a double buggy. I followed a woman in the shopping centre pushing twins cause. I thought it was them, her bloke shouted abuse at me. I hung around nurseries

and the police got called a couple of times. They felt sorry for me, but they said I couldn't worry people they thought I was gonna snatch a kid. I looked up the names of the people involved in the adoption in the phone book, even people with similar names. I went to their addresses just in case one of them had the twins. Looking back, I can see I was really ill, no one did anything to stop me or help me. I was forgotten. That last search day, it was pouring, with sheets of rain. I lay down under a tree in the park and someone called an ambulance. I was taken to hospital, I was in there for 8 months. Searching- no support

#### Gill BM10

LD: Did you experience stigmatizing because of the adoption.

Gill: Course there is, it's adoption stigma. It doesn't bother me that people think I'm scum who was in prison, homeless, mad, cause they have their own skeletons in their wardrobes; but authority saying I'm bad cause I lost my baby that bothers me, that's hard to live with. Mostly I pretend like I didn't have a baby, I don't talk about her, the only way to carry on was to pretend C was never born, so adoption never happened. Social stigma- denial of child

LD: Were you given notice of Children's Services plans to place your child for adoption.

Gill: in what way? I was told that an adopter was 'lined up' for the baby when I had my pre-birth assessment, I knew they couldn't say that really but what was the point in arguing when the plans were already in motion. Informal notification of adoption

LD: Did you give written consent to the placement for adoption/adoption

Gill: I consented to her placement when they got the care order. Consented to placement

LD: do you feel that your consent was informed and given freely.

Gill: no to both, did I say already I was in hospital- I wasn't told about any other option except to consent. The woman came with the forms. I didn't have many visitors, so it was like this event to me. She saw me on my own in the dining room. She warned me that I was giving consent for her to be adopted, problem is at the time with the Depakote and the other stuff, the anti-psychotics I was on I didn't get what that meant, then she said if I refused the courts would override it, and I just accepted that. I had no time to think about it. I really regret it now. My consent was...well it was injustice. There was nothing else I could do. I was locked up in hospital. I didn't have a solicitor. I lost my contact months ago because SS pushed on the court the idea I was going to damage her (baby). I thought I was bad anyway, not good enough to be her mum. That's why I consented,

not because I was informed properly. No one sat down with me and explained what other options I had like the right to refuse to consent. Consented to placement/adoption not in line with requirements

LD: Did you attend a 'goodbye meeting' with your child.

Gill: they only gave the (...) one day's notice that the next contact was the final one. I was on the meds and they were causing me bad side effects, sleepy and I couldn't stay awake. I remember them bringing her in, but I can't remember the actual contact, part from the drugs but I reckon I blocked it out cause it was just too painful. Goodbye contact

LD: Looking back do you feel that you were listened to and played a part in the process of your children's adoption.

Gill: I wanted adopters who would love her and be honest. My fear was that the new (parent?) would say I was a child abuser. I just wanted someone to be respectful and tell her the truth. But to be honest even if they said, 'what are your wishes and feelings Gill', isn't that what the law says we are supposed to have? Birth mums wishes and feelings? Well they could say that and go off and do what they like. What can we do? We don't have no power, they just say that, but they only do what the adopters want, we all know that. No involvement in the process

LD: Have you had the level of contact with your child that you expected to receive.

Gill: letterbox withheld four years of letters to me from the adopters. In January I got them all, a letter for each year plus 2 post cards and some pictures she had drawn on her first day in nursery. No explanation, nothing. I heard through the grapevine the LA went on special measures and the adoption team were all sacked and replaced. I reckon they withheld my letters on purpose- imagine how many parents they do this to then say 'oh, no letters have come', paints the adopters as the bad guys, we none the wiser. But it was a massive shock getting all this after four years of nothing, I thought she must be dead, after all why else would it stop? The LA wouldn't answer my calls, so I had to accept she died, I had my own memorial service for her in the baby cemetery. The day after the letters came, I lost it, I had a breakdown, I was referred to crisis team and the therapist said it was cause in my mind and emotions she had died. It was like she had been brought back to life, I had to deal with the truth that she was out there somewhere growing up and living. Post adoption contact letters withheld

#### Jane BM11

LD: you said that you challenged the contact being stopped.

Jane: I made an (application) to the court about our article 8 right to family life when they just stopped our contact so sudden with no explanation. It wasn't even looked at, no judge looked at it, at the final hearing I was told to 'shut up about your right to family life you don't have a right'. Opposed termination of contact

LD: who told you to shut up.

Jane: my children's solicitor

LD: did you have contact such as letterbox following the adoption.

Jane: I'll tell you this so long as it's in confidence

LD: it may be used in the research, but your name won't be used or any other personal data. Ultimately, it's up to you whether you want to share certain things with me

Jane: OK, well I'm in daily contact with my children on Facebook. They're 10 and 11 now by the way. Listen I ignored their messages for months, it was them who got in contact with me first, I was so scared I can't tell you how scared I was, and I didn't reply, but I read them over and over, just thinking about it all. One day I just replied, you know that attachment I sent you? That's the stuff they have been sending, pictures, and lovely little messages like they've never been away. Before you ask, I'm not contacting the adoption service because I know they will stop it, get an injunction against me. I can't risk that and have my kids feel I have rejected them a second time. My ex solicitor knows the kids have made contact but not that I have replied. He said to close Facebook and use a false name, but I can't, in the end its going to come out but it's worth it to me and to them. Children contacted BM seeing them in secret

#### Jasmine BM12

LD: what information were you asked to put in the form

Jasmine: so, like the kind of people I would like to see adopt them, like I said a mixed-race family because of the kids being mixed race, the SW eventually got back to me and said the couple weren't mixed race, but they had adopted 2 other mixed-race children who were older now so they had a lot of experience. They understood (...) like how I did (.....) as a white mum with mixed race kids. Knowing that made me feel important like I had played a part in the decisions being made. It's made a difference to contact as well, the SW only wanted annual, but X decided to send 2 a year plus she sent me her first school report, with the name of the school blacked out but showing how well she's doing. Involved in decision making-Post adoption contact



Jessica BM13

LD: how does keeping the adoptions a secret affect your daily life

Jessica: it doesn't really, well actually it can, when I get careless, once I accidentally slipped up about the kids. Me and this other mum was talking about breastfeeding. I said I must have breastfed for 6 years of my life. She's like how? (...) you only have 1 child, how have you breastfed her for 6 years when she's only 5? She gave me a funny look and I felt so awful, but I just couldn't say the truth that I had 2 others gone to adoption, I knew she would have told everyone. I couldn't stand the whispers and the looks, imagine the shame. Pretending they don't exist also makes me feel guilty, it's overwhelming sometimes, there's the urge to say 'I've got these other children', especially as I have C, I shouldn't be denying them, but the fear of being judged and talked about is more powerful than guilt. Social stigma denial of children

LD: Were you given notice of Children's Services plans to place your child for adoption.

Jessica: after the final care order? Yes, but I already had been told ages before, when the youngest had only been in care for 3 days I turned up for contact and the SW said she's being put forward for adoption, that threw me into a right panic at the time. Informal notification

LD: you said forced adoption, can you explain what you mean by that

Jessica: I didn't have no rights to fight, in adoption mums don't get any say, they say they're being adopted now go away. Forced adoption

LD: Looking back do you feel that you were treated fairly

Jessica: No, here's an example. C's were placed, and my solicitor called me in. He said it was a good idea to write a letter to the social worker, as I hadn't been asked, but to open a line of communication by writing a letter about their favourite foods and hobbies and stuff I would be the only one knowing, like C had chicken pox. So, I wrote the letter and I decided to pack C's favourite teddy, her baby-all-gone and this dress C wore on Christmas what she loved so much, it was red with sequins. I took them to their office and I explained, but the stuff was met with suspicion. I said can you pass this on to the SW she didn't want to accept it. I asked her to let me know if SW had taken it to C's but I never received anything to say it had. It bothers me big time, I wonder if it was ever passed on, I don't have no faith it was, and C's would have really missed their things. Unfair treatment not involved

Karen BM14

LD: Did you experience stigmatizing because of the adoptions

Karen: well I'm ashamed to talk about it in case people think I abused her but I'm not ashamed of being disabled or mentally ill, that's not my fault. The stigma is that if you tell someone about the adoption they just assume you must have done something really bad to cause it. When in some cases, my case, I didn't do anything wrong. I just wasn't good enough for them, a good enough parent in the eyes of the law. Legal/social stigma

LD: Did you attend a 'goodbye meeting' with your child?

Karen: I've never told anyone this, can you just bear with me it's so hard to talk about. After the final contact I walked back to the refuge, it was 6 miles or so. I didn't have no coat -when I got back I was frozen. I went to bed and slept for 2 days. Then just crying and crying. X called the doctor out and he offered me lorazepam or something. The next day I felt like they were dead, or my heart had been ripped out. I literally couldn't move for days. I'm never going to see them again. I wanted to never wake up (....) ...it took a long time for me to be human again. My counsellor kept saying "don't give up, keep going for you and your children". Final contact/goodbye

LD: you said you felt discriminated against?

Karen: I wasn't involved. I have a learning disability, but they said I wasn't allowed to make simple decisions. C's were moved to the adopters and I wasn't even told. What is so incredible is how society has changed in the way it treats people with learning disabilities but they (local authority?) acted like it was 50 years ago when people like me were kept in institutions. Not involved in the process- discrimination

LD: did you have the expected levels of contact?

Karen: not at first cause I couldn't reply so I think they thought I didn't want to stay in touch. I can't really write all that well, it's a struggle. I rang the social and they sent a FSW round to see me, she agreed to write the letter each year for me, I tell her what to write. Help to write letters

#### Karis BM15

Did the LA offer you help and support?

Karis- I had support from X (social worker) she was recently qualified and used to visit me and the kids, we got on well, the kids liked her, we went to the park. She helped me with finances and decorating a room for the kids, she was happy to keep things out of court and things were going well. Then I got a text from her saying she'd been take off

the case because her boss felt we were getting to close and that might affect her judgment...I was getting a new SW. I'm sorry it was instant hate, I promise you, hand on heart it's not just me, I didn't mind working with them. X turned up unannounced and stared through my living room window. I messed up really, I was so put out I told him to go away and make an appointment which he did. He was total opposite of X, pompous and he patronized me, talked down to me and was asking me about me being sexually abused in front of my oldest boy. He went straight to court for a care order, said I wasn't coping. I got more and more angry I couldn't believe how things were going. The kids stayed with me on care orders, but X was coming round every day unannounced. I called his office to complain to his boss, but they said he was a line manager, what does that mean, he has no boss? He made sure they went into care. He came round with the police and I had no fight, no strength to stop it. He was a bully from the start, he couldn't even talk to the kids- he got their names wrong. I had contact with them in a room with a glass wall and he sat on the other side staring at us. I felt like I was losing my mind. He made stuff up, I promise he did, I've no reason to lie, it's all over now. He said I had fires in the garden when that was my neighbour, I called 999 because the fire was so huge I thought it was out of control. He twisted things, when I was admitted to the hospital he went in my house and packed my clothes and brought them to me I hadn't asked for this, it was like an invasion of my personal space. I'm not proud but I threatened him in the end, outside court, I don't have a defence. I told him to go and die, he really ruined our lives, and we were Ok before him, coping Ok. I got done for making the threat (to kill?) he was writing to the court. I was told by my solicitor demanding that I be put in jail for his own safety. He said he feared for his life, funny thing is a few months later he left social services and became a therapist for kids and families and plastered his name and home address all over the internet, funny thing to do if he was so scared.

LD: Did you experience stigmatizing because of the adoptions

Karis: In the mother and baby unit where I was with my youngest a lot of families had the social (services) in their lives, so we didn't judge each other. But you really find out how you are labelled as a bad mum when you ask for help. I wrote to the head of the family courts, the minister for children, the human rights courts, X (that human rights barrister), and do you think any of them answered me? You know stigma? Well there's your answer. None of them would ever believe a 'bad mother' would be a victim of a miscarriage of justice. Legal and social stigma

LD: can you tell me about your experiences in court

Karis: They don't make no eye contact. They talk legal stuff and you're expected to understand it. In front of the judge they take it in turns to put you down. You go in full of hope and listen to the terrible things they say about you. You're already in the gutter. I don't know why they feel they have to rip you to shreds. So much of the evidence was wrong, made up by the SW, it was a miscarriage of justice. Experiences of court

LD: do you feel able to talk about your goodbye contact

Karis: I only had a final contact with the youngest. I held him, but he smelled different to how I remembered. He had lost his baby smell. He didn't understand. I accidentally said, 'see you soon'. The social worker carried him out and he was doing that little starfish wave, you know that little fat hand wave that toddlers do. Saying 'ta-ta' but he hadn't learned to say mummy yet. Even though they prepared me for saying goodbye I was never able to deal with it emotionally I still haven't five years later, all that goes around in my head is that he didn't realise that day he wouldn't see me again. You should see my living room, it's a shrine to him. I have over 100 photos and 40 collages on display. I get upset looking at the pictures. Very emotional. It reminds me of (.....) my sister thinks I am torturing myself but it's my only memory, if I pack them away I have left him in the past. Goodbye contact

LD: you said you look for him, can you talk about that a bit more

Karis: I really believe he's in the village where I lived as a child. I have been back, not to see anyone, no one in my family lives there no more. I was took off my mum and step dad, then they moved away. I know it's irrational to go 200 miles every year looking for him, but I feel as though he is there, or he has been there, I feel closer to him when I'm there. Searching

LD: have you received the expected levels of contact

Karis: when placement was being sorted even after all the things they said, my solicitor said the judge knew me and C were really close. He gave me a ray of hope. He told the SW and the guardian that it was in C's best interest to make sure contact was a priority maybe more than once a year. They wanted adopters who would do that, and X apparently said yes so it was all agreed, in the end they agreed to two letters a year contact, but the judge wouldn't make a court order forcing them, the SW said they don't do that.

LD: have you had that level of contact

Karis: No, I've had 2 letters in five years. It's a breach of the agreement that's what I am fighting but no one is listening. Post adoption contact

Katie BM16

LD: you said there was domestic violence in your relationship?

Katie: Terrible violence (.....) Verbal abuse, always shouting, calling me a f----g bitch and a nutter, he punched me in the face, pushed me over when I was pregnant, threatened to break my arm, hiding my house keys so I couldn't lock the door and go out, calling me from work making threats, blaming me for everything that went wrong. One of the main reasons she got removed and adopted was him constantly attacking me. At the end of the day I deserved to lose her for allowing him to hit me. Self-blame for domestic violence

LD: you said in your email that you consented to the placement

Katie: it was the only way C would be safe from him, she needed to be adopted and yes it was informed, and I gave it freely, well on my solicitor's advice, but you know it felt like it was right. I consented for her, not for me. I owed it to her to let her go. When he gets out which won't be long he will look for us, I live in a safe house, he can't find me, and I can't live my life worrying that he might find C. He would kill me. He wrote a letter from person apparently making threats to kill me, he ended up getting a longer sentence. C's best off where she is. Felt consent was informed/freely given

LD: did you make a life story book

Katie: no, C's life was not good, I love her, but she saw so much violence. She can't know about her dad- I made it clear to the adoption SW, she mustn't know his name, if she looks for him in the future god knows what might happen. She needs to be protected from the risk, best also if she doesn't know about me, if she finds me he might find us. Decided not to make LSB

LD: before the adoption did you have contact

Katie: before I made the decision to have the clean break yes. I knew when she was placed official with the foster family that kept her. I knew she was doing Ok because the social worker rang me, and I saw C once a fortnight and she was gaining weight and smiling at me and laughing. I can say that the adoption was a fairly decent experience.

Lindsay BM17

LD: in your letter you said you represented yourself in court, was this during care or placement proceedings

Lindsay: I'm not sure, I didn't really know what I was doing there, I thought it was for contact and I was desperate to see the kids. I thought the social worker, the barrister and guardian, the solicitors were all against me. It went on and on with me getting more paranoid by the day, arguing with the social workers and the judge. I should never have been there, why they let this go on I will never know. I had photos of the kids on the bench. I was staring at these cold and emotionless faces, all saying 'we told you she can't have her kids back, here's the proof'. Looking back, I wish that someone had stopped me from going, it would have been kinder to everyone but now I can see why, the kids didn't want to be adopted, they've told me that, they told the SW that at the time. Experiences of being in court

LD: have you had contact since then

Lindsay: The kids looked me up on 192.com. They turned up at my door

LD: how old are your children now

Lindsay: 12 and 15- I knew, I had a feeling they would come. They came all the way from X, got the coach, they were supposed to go to a festival, an art thing, who lets a 12 year old travel all that way? Now I know where they are I do the travelling, I go on the train when I can afford it, we meet up in the town or the museum, spend a few hours together. I think it's illegal what I'm doing, I feel guilty like I am doing something badly wrong, but I can't not see them cause they didn't want to be adopted in the first place, they need me, this would just be like rejection. So, I tried to do it the right way, I rang the agency to ask about what if adopted kids contact their mum, just an enquiry you know. They wouldn't even speak to me, they slammed the door in my face, 'children don't contact their former parents' she said. Can you see I've no choice but to visit them and face the music when it comes out? Children found BM-secret contact

#### Louisa BM18

LD: Can you tell me what was affecting your life personally in the period which led to adoption

Louisa: I ended up on a section 41 and in hospital and the expert in court who gave evidence said I would never recover from schizophrenia and would always have suicidal tendencies (...) for that they placed C for adoption. Five years later I was out of hospital, conditionally discharged and had been reassessed as having had nothing more than severe depression and PTSD. I went to a solicitor to ask if I could take legal action to get the bullshit diagnosis retracted but after 5 mins he said I wouldn't get legal aid. I made a complaint to the health authority, but he was a private psychiatrist. I complained to the

GMC and by that I found out he had been struck off for having a relationship with a client and he himself suffered from depression. I had no way of getting justice. People everywhere have depression, but they don't lose their kids forever. The grief is manageable now as opposed to 2 years ago. Then I wanted to die but I reckon I was stronger than I realised because I carried on.

LD: Did you experience stigmatizing because of the adoptions

Louisa: I do believe in stigma. I live like a recluse. I moved away. I even told a nurse in the doctor's surgery that my child had died, how terrible is that? But anything was better than telling her my child was adopted. It's not like she would care I suppose but I didn't want to see her face when I told her, it's like in life, stuff like having a child removed, it's similar to when someone bad hurts a child. People just think the same thing of everyone, we're all lumped together as child abusers and then that can lead to vigilantes and haters writing on your door 'child abuser' so everyone knows then you're driven out of your home. Social stigma

LD: did you attend a goodbye meeting with your child

Louisa: yes, my mam and dad came I couldn't have done it on my own. Oh my god we were devastated; we put on a brave face for C, making small talk with the contact supervisor, C was clinging on to me, she sensed something was wrong. It was like a bad dream only I didn't wake up and find out it wasn't real. Afterwards we went home, and mum made tea, it was like a burial had taken place...like C had died. But there weren't no sympathy cards we were just expected to pick up the pieces and carry on. Goodbye meeting

#### Mandy BM19

LD: Can you tell me what was affecting your life personally in the period which led to adoption?

Mandy: They told me they needed a 'forever family' but they didn't explain why I wasn't that. The grounds were neglect, emotional harm and risk of future emotional harm. I was raped by C's dad. I worked through all of my issues, so I could be a mum to them, alone because there was an 18 month waiting list for counselling. I read 13 books on surviving rape and getting over it. I gave C's as much love as any mother can. When the dad, the rapist, made death threats I had a few months where I was struggling and, in that time,, they took them and adopted them.

LD: Did you experience stigmatizing because of the adoptions

Mandy: what you mean, being different? It's OK, you can be normal so long as you don't talk about it, so losing my kids is my dirty secret, no one knows except my boyfriend and my family, but they would never say anything cause it was partly their fault. My comfort zone is my woman's aid meetings cause there It's normal to have kids adopted like it's normal to be hit and raped or be a survivor and be told we are survivors, but you ask me to tell a stranger that I was with a bloke who battered me and for that I lost my kids, they would blame me...I'm the bad mother. If you lose a kid, you will always be marked. Stigma- safe group

LD: before you said you did attend court, but you didn't stay, can you talk a little more about that

Mandy: oh, right the final hearing for placement, that was the time I literally couldn't walk into that courtroom and face them, cause I didn't even have my brief by then. I stayed in the loo until the secretary came and got me, she was saying you can either come in or it will be heard without you bla bla. I was treated like a stranger to my children, like I wasn't their mum any more. They told the judge my life story like they knew it, but they didn't. It was like they forgot it was about the children, it was a personal attack on me. I ran out of there thinking 'never again'. Experiences of court

#### Maria BM20

LD: Did you experience stigmatizing because of the adoptions

Maria: when X kicked off the last time he barricaded us in the house and hid in the loft. When the police turned up they smashed in the door then X kicked a hole in the roof. The whole street was out watching, there was often trouble in the street but nothing like this, there was a camera and a reporter from the XX talking to the neighbours, it was in the paper the next night, our names and everything. Me and C's got took off in a police car to the general, so the kids could get checked over, and me. I only went back home once more to pick up our stuff and even then, I felt eyes on me. After the adoptions I needed to hide to avoid the shame, so I moved to a different area, people who I used to call friends were gossiping behind my back. When you lose a child in these circumstances people choose to believe the authority figures. It might be yesterday's news to some people, but it's always going to be my life. Social stigma

LD: can you tell me about your final contact

Maria: when you think about what it was, saying goodbye to the children you gave birth to, it was not as bad as you would imagine, did you have a goodbye contact? I only ask because you might understand that if people treat you nice and respectful even painful



things can be ok. X left us alone, we met up at the x centre they have this lovely little place where they built, they got funding to build a sensory garden for the special needs kids. We met there, and x left us alone for quite a while, we had a picnic and the garden had a little shelter, windchimes, a little pond and fountain, the kids were happy, so I was too. She popped in every so often, but it was just us mainly because it was a school day, so quiet. I forgot it was goodbye I felt quite positive. X was really thoughtful and showed she trusted me and that made it Ok. I go to the garden quite often just to sit and think. I have good memories of that day. Goodbye contact-positive

LD: what life story information were you asked to provide

Maria: I wrote a letter to them, all about their past. I tried to make it honest, but I didn't want to scare them, so I made a point of writing the positive things, how much they were loved, their first milestones. I said their daddy was not well and left it at that. I didn't know what they would be told about us. A few months after the kids were adopted X and X write me a thank you letter, I've still got it, it said 'thank you for your sensitive letter we will share it with C and C'. positive about life story info

#### Mel BM21 written account

Mel: I consented to my daughter's adoption under pressure from social services and not being aware of the proper facts. The main reason I ended up losing her was that I married her dad and he was schizophrenic, he kept that from me. I had no idea and when we met, it wasn't obvious. When I was 6 months pregnant he came down with what I thought was depression, but I found out through the GP who sent an outreach worker round, she said aren't you aware of his illness? He had been going to appointments for a year while we were together then he stopped and that's when he became unwell and they eventually realised he wasn't being seen, they didn't even know he had got married. I didn't deal with it well unfortunately, I found out he was violent, and I left and went to stay with a friend. He got hospitalised and my life just went downhill. I got severe post-natal depression after C was born. The severity of the depression left me totally numb and I was in a state for 17 months, I found it hard to feel good emotions even for loved ones. When she was 3 months I felt like she needed proper care, so I asked for her to be taken into care. I tried to get myself together, but it was...I was just numb with no feeling. When she was 10 months they started to apply pressure, I had split up with X he was in and out of residential units and his illness (was then) wasn't getting stabilised. I asked if she could stay in foster care for a bit longer but they (social workers) kept saying no and then they got a guardian ad litem involved. I lost what little fight I had left in me as she (guardian) made it sound impossible to get her back. I didn't have counselling and I

wasn't told about the long terms effect of the adoption. I knew life would be hard if I got her back, but I would have managed as a single mum I had some friends to support me. She was adopted just before she was 2. I deserved what I got but my counsellor said I shouldn't blame myself for being ill. The social worker said x deserved to be raised by 2 loving parents rather than 1 mentally unwell mother and a violent father, that hurt so much and when I later told my counsellor what she had said the counsellor was stunned, but at the time her words seemed acceptable to me, I supposed that was the effect of my depression.

LD by email: did you experience stigmatizing because of the adoption

Mel: yes, by the social and the people who adopted C. They have 2 biological children as well as mine. They go to a good private school in my area, they weren't willing to move just because of me living so close. The social worker advised them to instruct their solicitor, which they did, to ask the judge to order me to move so I would never bump into them or C's. The judge refused, he said I could live where I liked, but it hit me, that was how I was seen, as a piece of shit who could be ordered to move away to make other people's lives easier. Once you lose your kids you are nothing. Legal/social stigma

Michelle BM22

LD: Can you tell me what was affecting your life personally in the period which led to adoption?

Michelle: My son was adopted aged 8 because of my mental health, addiction and physical condition, they (LA) told the court I couldn't properly care for him. He had been in respite care over the years many times but when he was home we were always happy, and I cared well for him. He told the court he didn't want to be adopted, he told the guardian, but an expert on my physical illness assessed me and said I would get less and less able to care for him, so he was adopted. Please believe me I have very high standards and my son was brought up to be polite, he went to school, he was healthy. He ran away from the adoptive home and came back to me. The next day police and social services were round, first they accused me of finding him and contacting him, but they had no proof of that at all. He was insisting he wouldn't go back and he had changed so much. He was placed back in care even though he wanted to stay with me. He told the police that the adoptive dad threatened him with a pressure washer for talking back to him. He was given a ball baring gun for xmas and told he could shoot stray cats and worse he was told he could drink, he said the adoptive dad was drunk very often and always had a can of lager. The local authority told us they were going to do an investigation but did not do an independent one just an 'in house' one where they said

there was no evidence that any of my son's allegations were true. My son had a video on his phone of the adoptive dad shouting threats at him.

LD: in your letter you say your son was forcibly adopted, can you explain what you mean by that

Michelle: C was adopted while I was in hospital, well the plans were made then. I was told one day by a nurse the adoption had gone through, I had no idea they had that kind of power, parents have no rights and no say in their child's future. Forced adoption

LD: you also said you are in contact with your son now

Michelle: he was 8 when he was adopted, the guardian even said in her report that she didn't expect he would break ties with me and his sister so easily. We did everything together, it was just us, he looked after me you see sometimes, we are devoted to each other. He got in touch secretly, that's what he said, that his new mum and dad don't know he's seeing us. We've seen each other a few times, I've got my life sorted now, that's what he wanted to see, me off the drink and stable. Seeing him means I got back a missing part of me, the law said I wasn't his mum, but he decided I was his mum, because it was only the law that decided I wasn't his mum no more. Secret contact

#### Nica BM23

LD: At the time Children's Services planned adoption for your child/children what was your living situation

Nica: I was on my own living in temporary accommodation with the kids. The father left me I don't know what happened to him I woke up one morning and he was gone, and he paid the rent and I was a stay at home mum so I ended up in a B and B because I couldn't afford the rent and the council said I made myself homeless and my mum was continually letting us down, she said she would help but never did. I wasn't offered any help at all with housing except the B and B and that was the start of the problems really.

Nica: I guess homelessness was the start, then the B and B- the building was hell on earth. That was where I started to not cope. I was OK at first but the other people there some of them were terrible. Drugs and drink and I had my room broke into twice. The kids were scared, and I was. There should have been a warden there all the time but most of the time no one was there and there was fights and parties and drug dealing. I am from a quiet family. I had never had nothing like this in my life before. I used to barricade me and the kids in at night and use a bucket to wee in. One night near Xmas I called 999, this woman below me was just screaming and screaming. The kids were

terrified. Well the police did a welfare check and came in all the rooms and cause we was barricaded in with a chest of draws and I was hysterical they took my kids on a Police Order and that was the start really when social got involved.

LD: Were you given notice of Children's Services plans to place your child for adoption.

Nica: what like proper notice? Not really, but one thing I always remember is that when I was seeing them for contact all the social worker ever talked about was permanence. Just a word yes? Unfortunately, I didn't understand what she meant, many times she spoke of this permanence and I thought this meant C's would be back with me, so I agreed with her that this was the best outcome. I now understand she meant adoption and this was used in a report for the court it says 'mother agrees permanence is the right thing'. I tried to argue to say no I didn't agree but in the end, I was pushed into consenting. Most of the talking was done at contact centre, they always collared me after- but I was always emotional and upset cause of leaving the kids who always cried- how could I listen it wasn't fair also I had no solicitor there, so they could say anything, I wasn't protected.

LD: you consented to placement of your children, can I ask do you feel as though your consent was free and informed.

Nica: yes, but it wasn't that simple. It felt awful, to sign away your children means you are turning your back on them, but I was put under so much pressure by the local authority, they sent me a letter saying that delay would cause my children (harm?), so they needed permanence very quickly. This was the push for me this letter, I was so worried they were suffering harm in care and the letter said that a family could offer them a settled life. To be honest I didn't want to do any of it, not consent, I really wanted to fight my problems and get them back so no it wasn't free consent. Consent not informed/freely given

LD: was giving consent explained to you, what would happen afterwards

Nica: no, nothing was explained. I was called on my phone by a woman from the court, the family department. She said to meet her outside Cafcass, so I waited to think we would go in to the offices, but she gave me the form there and then, I signed it sitting in the woman's car with her, in the car park where she told me to meet her, she showed me their birth certificates and told me to sign and that was it. I didn't realise also that my contact with C's would stop nobody told me that. I was kept in the dark all the way through. Legal requirements of consent/involvement in the process

LD: were you offered support by the local authority at any time during the adoption process

Nica: No, why would they support me, I was the enemy, they never helped m.

LD: but these are professionals they are supposed to be neutral and non-judgmental.

Nica: you're a birth mother aren't you? How did they treat you when your child was adopted?

LD: did you make a life story book

Nica: no sadly, I said no to them. At the time I was so ashamed, ashamed to have consented and ashamed of failing them. Looking back, I wish so much that I had made one, now they will only know what they are told. No LSB

LD: Thinking about the adoption could you describe the way you feel now

Nica: I feel angry about it to be honest – I feel like I was duped by all the well-meaning people who in the end convinced me adoption was the right thing and I was a bad mother not to consent. So many regrets -I live day to day hoping and wishing that they may find me- get in touch.

Nicky BM24

LD: did you make a life story book

Nicky: yes, but it wasn't my children's life story, it was someone else's idea of my children's life story. They don't let you do your own in case you put inappropriate stuff in there. I wrote these 2 letters one for each (Child?) and had to give it to the FSW but when they sent me a copy it broke my heart. X had put a lot of crap in there. Most of the facts were wrong. I couldn't accept it because this book will be my son's and daughter's guide if they decided to come and find me. C was only 3 months when she was taken, she will have no other memory than the book. For that I feel very angry, it's that woman playing god...she had no right I can possibly see to write my story for my children. unhappy about LSB

Nicky: but can I just say I realised why they did it, why they changed so much of my story, it was so manipulative. They separated my kids. They put my son with adopters here in my town, so can you see why they would mess with the story, to change things, so he wouldn't be able to find me. They came into the café where I was having breakfast. My child and his new mum. I saw them and ran behind the counter, through the kitchen and out the back door because I thought I would be arrested if they saw me. I wasn't sure

what to do so I called Cafcass and the guardian who did the adoption rang back in about 2 minutes. She said I had to avoid any confrontation. I tell you it's terrible to see your child and not say a thing. After weeks of calling the social worker I got a letter from their legal service admitting he lives on the X estate, that's 7 miles away from me. The letter said, 'it's not ideal' and suggested that I move, but why should I? We have lived here all our lives. I would never actively look for him, but I can't help it if we see each other- it's not forever is it the adoption? When I'm out I do look out for him, I can't help myself. If I walk past the park or the football pitch I think maybe he's there'. Placed child close to BM

LD: So there's no closure?

Nicky: 'No. there's none. It's become a way of life, as regular as sleeping and eating. Wondering if I am going to see C'. It's not forever is it...the adoption. It's like some stupid soap opera they (social services) have created. Emotionally well maybe that's different I lay in bed and imagine all these things like X (adopted son) and X (daughter) meeting and falling in love or him running away and finding us- does he even know we live here.

LD: Could you tell me how you feel now about the adoption?

Nicky: it's hard, there are dark days and I wonder if I will ever be happy again. I had years of domestic abuse and at the time I thought it was normal, I'm so ashamed of this but no one ever said, 'here let me help you'.

#### Paige BM25

LD: did you go to court for the placement proceedings

Paige: yeah, my key worker from the unit took me and another bloke because they were worried I was going to run off they, treated me like a mad woman. When you go to court with a nurse they are gonna think of you and treat you like you're mad, but you're not mad you are ill. The social worker and the guardian were asking for a security guard to stand in the court in case I attacked them, but I've never been violent in my life. Experiences of being in court

LD: do you feel OK to talk about the last contact

Paige: it's alright, I was told by the SW not to get emotional. They were 2 and 4 so they know something's going on. I couldn't stop crying so the SW wanted to cut it short she was saying; 'if you can't get yourself under control we'll have to leave'. I was meant to get an hour but after 15 minutes she wanted to leave. I held the youngest I wouldn't let him go then he started to cry, so they dragged him off me. Goodbye contact

LD; have you received some letterbox contact

Paige: I have, I've had quite a few letters, they say quite a lot, it's really chatty, like C loves postman pat (yeah, I know he does, he loved it when I had him) and C is looking forward to our holiday at the beach. In the first letter the mum said they'd been to the zoo. She must have forgot herself cause she named the actual zoo. I got obsessed with this, before everything was so secretive, it was like a clue. Up til then I had never thought of looking for them, but I thought, well families always have favourite places where they go again and again, ours was the big park and the common. So, I got my dad to drive me down there. Post adoption contact- searches for children

LD: How far away is it from you

Paige: far, its eighty odd miles takes us a day there and back with stops. But it's a trip now like a regular thing, we go there oh say 5 or six times in the spring and summer, so in 3 years maybe.....17 times, but it's a trip now, its regular. If I see them I don't even know what I would say, but I haven't seen them. But I know they have been there, that's enough.

LD; you said you have had quite a few letters, how does that make you feel

Paige: hard to explain. Well it's a bit like being addicted to smack. I crave those letters, I live for them, then when I have read them I feel (...), I can't describe the pain I feel, there's no words in the dictionary for that pain, then when it subsides the cycle of craving the next letter begins again.

### Rachel BM26

LD: you said you find it difficult to talk about court?

Rachel: yeah, I guess. It's so cold and empty, full of people but empty, intimidating, it makes people not human, like they deal with humans every day, real problems, real human stuff, but no one shows any emotions. Did you know you can get taken down for shouting at the judge, but this is where you lose your family. You can't cry, there's no room for emotions in a court of law. Experiences of court

LD: Did you experience stigmatizing because of the adoptions

Rachel: It's shame. The shame broke me apart. I didn't leave my room in the hostel for 3 months only to use the loo, shower or make toast. I lived like that and not one person came round to see if I was OK. After court you are forgotten, like a piece of rubbish. Social stigma

LD: did you feel involved in the adoption

Rachel: no one does, no mum is involved, they shut you out. The solicitor warned me it would only be about the C's welfare and it was, I had never mattered less in this world than during my children's adoption. No involvement

LD: did you make a life story book

Rachel: oh god I can remember that experience so clearly, it was horrible. The SW sat opposite me wearing this stupid woolly hat with a pen and pad. He was ordering me to tell him my family tree, but I had no contact with my family. I was sexually abused by my dad and my mother blamed me. I cut them out of my life for my own and the kid's safety. Now the SW's saying if I didn't provide the family info he would write it for me, how insensitive can a person be?. LSB

Roxy BM27 written account by email

LD: could you explain why you mean by forced adoption

Roxy: it was forced because it was violent; when the police smashed my front door and took them, to the time they were adopted with me not being told how or why, I can't explain it any other way. It's forced because parents can't do anything, social services hold all the power. Forced adoption

LD: what were your experiences of being in court

Roxy: it felt like a fight. I felt like I was facing a jury, like I was a criminal. Not one of them addressed me directly but spoke to me through my solicitor. I wasn't even worth speaking to.

LD: but despite feeling like this you carried on with contesting the children's placement.

Roxy: you don't give up do you-till the bitter end- at least one day I get to tell my kids I never gave up fighting for you and I always thought there was a chance I would win the case. Forced adoption

LD: how do you feel about the letterbox contact

Roxy: my life is better for knowing they are happy. They get holidays, new bikes, even a pony. I could never had given them that kind of life. Letterbox

Rosie BM28

LD: Can you tell me about the experience of being in court?



Rosie: The judge and the SW thought that women's aid courses were for people that only attended who had left abusive relationships but that was not the case (.....). I had letters of support from my key worker (mental health) and the family support but the judge wouldn't even look at them. I think I made an excellent representation in court, but the judge just refused to take my argument into consideration. It is helpful for me to attend a drop-in organisation for support and education around DV. I attended one other therapy group and I completed my level 2 in counselling skills. I found it supportive to be around others that understand and maybe give support for them too. The adoption order happened, and I am very disappointed that I didn't appeal. I was OK cause there was nothing else I could do. The judge gave me an opportunity to speak but it just seemed pointless. Whatever we would say would not change or make a difference to the situation. They already made up their minds. Judge just wanted to know if I appealed her judgment. That's all really. If my child's adoption placement broke down I would love to look after C but I don't think that would happen. Even if I had taken meds for depression and PTSD that may have been the only way to cope and not be judged. I think that the LA have an obligation to support birth parents a lot more than they do. I have my brother, sister and best friend who support me. Experiences of court

LD: did you have a goodbye contact with your child

Rosie: It got cancelled I was still sectioned and it took weeks to arrange to get the permission from the RMO and the social to arrange for C to be brought in, then on the day they left a message it got cancelled, the bottom dropped out for me. I must have rung 10 times desperate (....) trying to get another date because I knew it was the last time.... I spoke to my old solicitor who said there was nothing she could do. I was powerless. I couldn't do one thing to make them stand by their promise. No goodbye contact

LD: have you received the expected levels of contact

Rosie: no- I had nothing for 3 years, I tried to contact the letterbox, but they wouldn't answer my calls or letters, what was the point in me writing when it probably won't get passed on. I went to a free surgery at some solicitors in town who advised me there was no legal action I could take. He reckoned that the adopters had changed their minds, which he said often happens. So, I can't question it and I have no idea why I haven't had letters. I never give up hope though, maybe one day they will accept that C will look for me and realise it's not helping to shut me out. It's the not knowing that burns you know, could they at least have told me that I wasn't going to get letters, then I could try and move on, not wait for the post every day. No letterbox

Sara BM29

'They (Children's services) put me in (the assessment unit) straight after she was born. One or two night staff were nice, but the day staff were awful, like security guards. I was really down and trying to deal with a new-born baby. I needed help to learn all the skills like feeding and bathing, but they were always too short staffed and busy. X (staff member) said you were expected to prove to them you could do all those things on your own. One morning I hadn't had no sleep because of C crying and the other babies crying all night, I had sleep deprivation really bad. C had a dirty nappy, I just sat and stared into space, and out the window. I physically couldn't do anything. They called the SW and she came out and said I hadn't cared for C properly at all. I was numb, I couldn't reply to her. She said she was concerned about C's welfare, the agency staff told her I left C laying on the changing table alone 3 times, but I honestly don't remember doing that, I did hold her, carry her, hug her quite a bit. The SW said she needed to take C to foster carers and that I needed help. The staff from the ward stayed in my room for the rest of the day. The SW came back and said for me to hand C over. I said no, I was getting scared, but I just hold on to her (sic). The unit manager and a male SW were there, they tried to wrestle her off me, but really carefully you know, you could tell they were scared of hurting her. I kicked out at the SW cause I wanted to protect C. They all backed out of the room really quick and were huddled outside. I never felt so scared as that moment, scared and alone holding C, rocking her. I should have known they would call the police. Two coppers turned up 15 minutes later. They came in alone and were saying 'Sara they've got a court order to take C into care, you have to let her go, hand her over please let's keep it civil'. I was saying over and over, 'she's my baby, she's my baby'. They kind of eased her off me and put my arms behind my back. As soon as the copper let go I went wild, literally I clawed at his face I punched him, I wasn't in control at that moment you know, all the years of abuse, I now realize at that moment all the anger I felt came out, they tried to arrest me, I resisted. I ran along the corridor. One of the coppers got me by my dressing gown and he dragged me, the one who I had clawed at his face (sic). He dragged me along the corridor and I felt my caesarean stitches go, they burst, I was screaming, and they literally chucked me handcuffed in the back of the van. They threw me in the cell, then they realised I was bleeding from my wound. They were going to leave me there in a cell, a new mum with a burst caesarean scar. They called paramedics and they took me to hospital. I never saw my baby again. They got their way. I am ashamed of what I did, attacking people. I hate myself for that, but I was, you know, incited, all the way along, they adopted her because I attacked them not because of what the law says you need to have a kid adopted, you know, substantial harm, I needed help

and instead they provoked me till I cracked. What kind of system lets a copper drag a new mum along a corridor till her stitches burst? I am traumatised by that, I had no one in the world. It was them against me, they got her adopted like they wanted, I didn't even say goodbye to her'.

LD: you said in your letter court was worse for you after the adoption order had been made.

Sara: after they overrode my consent I tried to appeal the adoption. I tried to get a pro bono to represent me, I asked my solicitor to do a referral, but she said she couldn't, in the end, I went on my own. I was going to represent myself. I told them I wanted to make an application to see the judge, but they kept ringing down to the reception and security kept escorting me out. After I went there about ten times the judge who made the adoption order made an injunction banning me from harassing the court staff. That's it, yeah, the end. I had to somehow face I wasn't his mum anymore, but I couldn't face the truth. I broke the injunction cause I waited outside the court and he sent me to prison. Experiences of court

LD: how has that left you feeling

Sara: I keep it all inside, the grief. I try to keep busy all the time because this picture plays in my head, over and over on repeat, of C sitting on a mat crying, pining for me, not understanding why she's not with me. I torture myself with this every day.

### Sita BM30

LD: Can you tell me what was affecting your life personally in the period which led to adoption?

Sita: I had mental health problems but please understand I was desperately trying to sort myself out, with little or no support. My child was placed with foster parents. I was denied contact. I was trying to get access to my child through court. I was told I could see C supervised for 1 hour a week. I fought with everything I had to get C back. It was argued that I presented future risk of harm to them and they were adopted.

LD: Did you experience stigmatizing because of the adoptions

Sita: It's the social that make the stigma. I had another child and (...) to work with them. They still went to court to get a care order, but the judge said no because there wasn't any evidence she was at risk. I could see it in their faces, they couldn't accept the judge's decision or allow me to be a success. I have to live under that (stigma?) they made, that I can never be a good mum. I've got a bad record. Legal stigma

LD: you used the term forced adoption can you explain what you mean by this

Sita: well there's no need for court at all, it's a waste of time. Social services forced my child's adoption through the courts, the judge hardly even looked at the evidence in support of my parenting. Forced adoption

LD: did you attend a goodbye contact with your child

Sita: no, I refused- it's all a game to them, not only is it harmful to children but it's a way the adoption services can show us our children have got over us- they are ready to move on, it's so fake, not to mention dangerous, a form of controlling children. How can a child say goodbye to their mother? It's the same for all this stuff about keeping children with their ethnic groups. It doesn't work with adoption, it's all a lie. I told them, I want C to be adopted by a x family cause that's not only his right to his culture but because I wanted him to know and understand where our family come from- my parents are dead, he was at the time my only living relative. But they put him with a white family from Britain, so far removed from his culture, he will stand out and his birth name changed. I can't believe that in this country there wasn't one single X adoptive parent who could take him, they just wanted to get him adopted as quickly as possible. Experiences of court

LD: so, you said you thought he was adopted locally in your area

Sita: I think so, well the foster parent adopted him, and I know they lived not far because the social worker used to say, 'they've just left' when I arrived for contact and that took them half an hour, unless they moved. Anyway, I have this walk that I take, each Saturday with the baby in her buggy I walk a different direction for half an hour rain or shine, I walk for half an hour, looking for clues, to see if I can find him. Searching

LD: You search for him

Sita: yes

### Soma BM31

I: Did you attend court proceedings- if so can you tell me about the experience

S: They took my children and placed them for adoption. I tried to oppose it, but I couldn't get legal aid. I tried to get to the high court by representing myself. My life had changed so much, my ex-partner who was violent to me and my children was convicted and put in prison for assault of me and 2 other women. I had started my life again free of him I have a job, but even representing myself I couldn't afford the costs, so I lost my children. Experience of court

LD: did you have the chance to say goodbye to your child.

Soma: the meeting was cancelled, I was told the children were struggling with their placements. They split them up you know. I found out a few weeks later, you know, after the cancelled meeting that, the kids had been brought together to say goodbye to each other, I wasn't told about this. I was in complete shock when I found out, how cruel and thoughtless, I saw some pictures of this goodbye not so long ago, the 2 of them together, holding hands, they looked so confused. I know they must have wondered where I was and why they were being told to say goodbye, they were too young to understand. But how upset they must have been, with strangers and no mummy. Would anyone have cared if they cried and were unhappy, do you think they were given hugs and had it all explained to them? No goodbye meeting

### Tracy BM32

LD: you feel that you were stigmatized by a person being paid to care for you

Tracy: I had to see this woman as part of my recovery care plan. She was awful, she was part of the mental health team, not qualified, but she was at uni training to be a mental health social worker but at the time she was like a support worker. She came round my house twice a week to see how I was getting on. It was fine to start with but towards the end of her coming round I lived in fear of her. She was fixed on me not caring for C even though social services discharged me and there wasn't no orders on her. She reckoned I was emotionally neglecting C, she kept threatening me, 'if you seem unwell to me I will have to contact the social worker and have C's welfare assessed and ask for your mental health to be assessed'. It was horrible her power trip. In the end I plucked up courage to ask for a new worker, even then she accused me of being paranoid. The new one was always saying how well cared for C was, the total opposite. Legal stigma

LD: did you understand the court process

Tracy: some of the time but I didn't understand when the barrister kept referring to the local authorities' skeleton argument no one explained it, and they should of because it was all about me and my apparent risk of being schizophrenic, that was their main argument for risk of future harm to C. I tried to fight it, but it's hard to fight when you don't really get what's being said. It's like you are fighting blindly, but for me the fight wasn't over until the adoption order even then, when I knew it had been made, I was expecting a miracle to happen, the people would change their minds and C would be given back to me. Experiences of court

LD: do you receive letterbox contact

Tracy: I was offered it annually, but I said no thanks- I suppose I feel different now I have another child but at the time I felt like the only way to cope was to cut all contact. I couldn't bear to be reminded of them growing up, I wanted to keep the memories of how they were. Experiences of court

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## **Article for Movement for Adoption Apology: by Lisamarie Deblasio**

This article is about historical, involuntary adoption and it discusses the injustice which flows from that. It argues that where forced adoption is concerned the fact that it primarily occurred between the 1950s and the 1970s is an irrelevant issue where injustice was suffered by those women who were subjected to it. The argument put forward by the Government that time has passed, and practice has changed does not, in any way, mean that mothers and their families should be deprived of recognition, an apology and an inquiry by those agencies with whom responsibility rests for past actions. This argument is strengthened by the public apology of the Prime Minister of Australia in 2013 who confirmed that adoption practices there were often illegal and corrupt. Campaigners such as the Movement for Adoption Apology (MAA) argue that in Britain practice was no different and there is a strong body of research evidence to support this. These leaves us to consider why the British Government, in the face of campaigns for an apology, remain quiet.

It is no longer a secret that many pregnant women who were not married found themselves stigmatised in society. They were often coerced and blackmailed into handing over their babies for adoption. This was prevalent in Britain for many decades. Between 1950 and 1980 it is estimated that over half a million women were separated from their child, with the number of adoptions peaking in 1968 with 68,000. There have been a number studies, articles and stories published by journalists, academics and of course the mothers themselves about the arbitrary methods employed under the guise of morality and decency. Since Winkler and Van Keppel studied the psychological effects of relinquishment in 1984 there has been extensive verification that proves the long term damage that forced adoption did to women. The literature also tell us that there was no justification to support the separations. Babies were adopted simply because their mothers were unmarried and posed not only a threat to morality but were considered a financial burden on the state with no husband to provide for them. Conversely there were statutory provisions in place under the National Assistance Act 1948; but evidence suggests that very few women were informed that they could seek financial support to help them keep their child. As the decades passed more and more academic studies concurred with the long term harm women suffered. Gradually as their anger overrode the shame of stigma, women who had been forced to give up their babies from the 1950s onwards became visible. They had stories to tell, of ashamed parents who sought advice from moral welfare workers, and churches who then aided the removal and adoptions of so many children by setting up their own homes for women and adoption agencies carrying out a brisk trade in new-borns with long waiting lists of married couples wishing to adopt. The lid was lifted on the mother and baby homes, thriving establishments designed to hide girls and their babies until the adoptions; homes that only existed because of the intolerance of unmarried women and their babies. Women who had recently been deprived of the right to mother their child, were generally told to go away and forget they had given birth to a baby, to get on with their lives.

Where the legality of such adoptions stands is questionable from case to case. Although adoption became a legal process under the Adoption Act 1926, and from that time legal consent of the birth mother to her child's adoption was required. In an overwhelming number of cases legal consent was absent. Even those cases where consent was given, rarely was it 'free and informed' as required under the law. Often consent was given under an oppressive campaign rendering the mother acquiescent and unable to challenge the process. The lack of concern

around agreement was at odds with the views of Parliamentary Committees who in reviewing adoption law, argued that consent was the bedrock of legal adoption, even if openness was not.

There is no longer such stigma attached to giving birth as an unmarried woman but this liberal acceptance does not paper over the cracks of the past. We can learn a valuable lesson from Australia's Government. In 2013 the Prime Minister Julia Gillard issued a public apology following a report which contained the testimonies of many hundreds of women. To all those women and their families who were in her words, victims of a '*shameful policy which created legacies of pain*'. Gillard was not simply paying lip service to those victims of Australia's forced adoption policy, the Government were to make provisions of around three million pounds to assist women in tracing, counselling and specialist support.

Whilst it is heartening to see that women and their families in Australia are at last to be compensated for their loss and to have some financial life-line to help them search for their adult children, where does that leave the UK mothers? The MAA have campaigned tirelessly and have so far secured two early day motions, the most recent in October 2015. But no apology has materialised. The mothers who make up the MAA and no doubt countless other silent women desire not only an apology but also an enquiry which they ask for with quiet dignity. Interestingly they have not demanded provisions of financial support for them and their families for whatever services they may need to allow them to feel that some level of justice has been achieved, they simply want to know why, and they want an apology.

Each woman that experienced forced adoption has a different story to tell about pregnancy, birth, loss and love. Some women have found or have been found by their child, sometimes decades later, whilst others have sought but never found their child. Finding their adopted child did not necessarily equate a happy ending, for many women being reunited was the start of a new chapter and for others it was short lived and initial contact failed to develop into a relationship. Whatever the circumstance and the outcome, what cannot ever be altered is the separation of mother and her child. From that act the clock cannot be turned back, and that severance can never be reversed. The ripple effect of this separation can be immense, future life events will be directly affected by this one act. It is not just the mother who feels the impact, there are fathers, her parents and his, later children, later partners, all of these people will unwittingly have some aspect of their lives shaped by the separation and adoption. It is of course important to mention that the life experience of the adopted child will also be impacted upon by the separation. The fiction that a child was no longer born to his or her mother and was the child of the adopters, we now know is just that, a fiction. The secrecy surrounding most adoptions for over three decades caused emotional damage to some adopted children who often grew up with no knowledge of their biological origins.

I have been honoured to interview some of the women calling for an apology and I would particularly like to share the story of one particular lady whom I shall call Jay. Jay spoke to me on the telephone one spring evening. I immediately warmed to her and she spoke with such positive optimism despite her very obvious experiences of pain and loss which stemmed from her being forced to give up her 10 week old son in 1966. Jay was just 16 when she gave birth whilst living in a mother and baby home far away from her own family. Jay had experienced a difficult childhood with four sisters who had spent time in care because her mother had suffered from illness and her father had found himself unable to cope with childcare. Jay was vulnerable and impressionable when she was made subject to a campaign of pressure by authority figures who wasted no time in convincing her that she would be doing the best for her baby by giving him up for adoption. Jay recounted memories of her time in the mother and baby home and the

recollections are clearly linked to strong feelings and emotions, she spoke lucidly of the bullying from other residents and the relentless pressure she was under, in particular her mother's illness was argued as a reason why she could not take her baby home.

Jay was parted with her baby, but she refused to forget him; and after 45 years she and her son were reunited. Jay made it clear that this reunion was not plain sailing. Her relationship with her son has been tenuous and there are long reaching implications for her and her other children. When I asked Jay how she feels now about the adoption, she is reflective and pragmatic, and she has been able to see the situation in the context of the way society viewed young women at the time. This is not to say that Jay is accepting of the adoption though. She is angry and rightly so, Jay believed that and took comfort that her son had indeed been given the better life which she was told he would have without her; the reality was actually something very different and her son did not have the utopia-like childhood which she had been led to believe he would by social-workers. She discovered later that the adoptive mother had died shortly after her son went to live with her. Jay believes that her son would have benefited much more if he had stayed with her. It is this realization that causes anger in so many mothers who felt that they could accept the loss if it meant their child was happy and well cared for, in some cases this transpired to be untrue, and as with Jay's experience, she cannot find inner resolution because it cannot be changed. She was lied to and deceived in addition to being coerced and manipulated by those in authority, whose actions were legitimised by the government who at the very least failed to intervene in such practice.

Injustice is a word that is defined as '*lack of fairness or justice*' and '*an unjust act or occurrence*'. Injustice a word which is loaded with diverse connotations and as with many words, means little to some but means the world to others. Sometimes injustice is disregarded when it took place a long time previously There is a saying that time is a great healer; but where harm or damage is inflicted on someone by acts of injustice, can we really just accept that time heals? Many people would say it does not. Those that disagree may well have experienced personal injustice themselves. The problem with injustice is that it is often the vulnerable person or the scapegoat who is subjected to it. At the time many of these individuals duly accepted the cards they had been dealt, they acknowledged the arguments that they deserved some punitive treatment. For some the injustice they received seemed quite just at the time and it may not be until many years later that they realise injustice occurred and they were the wronged party.

This of course turns the theory of time as a healer on its head. It may be that a slowly burning ember of injustice lives inside the person, as they grow and mature, as they develop self-awareness and they become educated about the particular issue they experienced, what is a tiny speck of anger begins to grow, ignited by the spark of injustice. It grows until it becomes too powerful to ignore. The individual then experiences the realisation that they suffered profound unfairness and with that realisation they must deal with the storm of feelings that were suppressed inside them at the time of the event.

My point is that the burning sense of injustice, the knowledge that a person was victimised by some devastating event, such as the enforced separation of a parent and child, will not be damped by time. The only 'healer', and even this is not redress for all, is to experience the remedy of justice. Of course, justice will not turn back the clock and neither will it undo the harm that was caused, but what it can do is allow the wronged party to experience some level of closure. If the body who dealt the injustice or a representative of that body can take steps to correct the wrongs, then those affected may just feel that they can let go of some of the grief, pain and years of suffering that the act caused. It is unfair to deny a person justice when the

evidence is overwhelming that they have the right to justice. As I said at the start of this piece it is not entirely clear why the MAA and the women and families they represent are ignored by the Government, it may be the issue of financial redress or simply that the Government do not feel responsible. But after meeting and speaking to these women I am convinced that as long as their voices are disregarded then we as a society continue to uphold the historical injustice suffered by them.